

EXHIBIT

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In The Matter Of:
TERRY LYNN KING vs
TONY PARKER, et al.

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF PHARMACIST
July 30, 2021

Gibson Court Reporting
606 West Main Street
Suite 350
Knoxville, TN 37902



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VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF PHARMACIST

July 30, 2021

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERRY LYNN KING,)	
)	
Plaintiff,)	CAPITAL CASE
)	
vs.)	CASE NO.
)	3:18-CV-01234
TONY PARKER, et al.,)	
)	VOLUME 1
Defendants.)	

APPEARANCES:

FOR THE PLAINTIFF:

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2 FOR THE DEFENDANTS:

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4 SCOTT C. SUTHERLAND, ESQ.

5 MALLORY K. SCHILLER, ESQ.

6 DEAN S. ATYIA, ESQ.

7 CODY N. BRANDON, ESQ.

Tennessee Attorney General's Office

P.O. Box 20207

Nashville, Tennessee 37202

8 ALSO PRESENT: David Jenkins, Videographer

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Gibson Court Reporting

S T I P U L A T I O N S

Volume I of the videotaped videoconference deposition of PHARMACIST, called as a witness at the instance of the Plaintiff, taken pursuant to all rules applicable to the Federal Rules of Civil Procedure by notice on the 30th day of July, 2021, at 9:02 a.m. Central Time, before Rhonda S. Sansom, RPR, CRR, CRC, Licensed Court Reporter, pursuant to stipulation of counsel.

It being agreed that Rhonda S. Sansom, RPR, CRR, CRC, Licensed Court Reporter, may report the deposition in machine shorthand, afterwards reducing the same to typewriting.

All objections except as to the form of the questions are reserved to on or before the hearing.

It being further agreed that all formalities as to notice, caption, certificate, transmission, et cetera, including the reading of the completed deposition by the witness and the signature of the witness, are expressly waived.

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I N D E X

E X A M I N A T I O N S

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E X H I B I T S

NO.	DESCRIPTION	PAGE
70	Prescriptions for Inmate Executions from the State of Tennessee Department of Correction Bates Mays' Supp. Int. And Prod. Responses 000066 to 75	121
71	USP General Chapter <795> Pharmaceutical Compounding -- Nonsterile Preparations Official May 1, 2018	136
72	USP General Chapter <795> Pharmaceutical Compounding -- Sterile Preparations Official May 1, 2018	137

1 THE VIDEOGRAPHER: We're on record at
2 9:02 a.m. on July 30th, 2021. This is the
3 deposition of Pharmacist taken remotely via Zoom
4 in the matter of Terry Lynn King v. Tony Parker,
5 et al., Case No. 3:18-CV-01234, filed in the U.S.
6 District Court, Middle District of Tennessee,
7 Nashville Division.

8 Counsel will state their names and
9 affiliation for the record and the court reporter
10 will swear -- swear in the witness.

11 MS. NELSON-MAJOR: Good morning. My name
12 is Hayden Nelson-Major. I'm with the Federal
13 Community Defender Office in Philadelphia. Also
14 present in the room with me is Alex Kursman and
15 Ana Baldridge. And along with Michael Cottone
16 from Bass, Berry & Sims, we represent Terry King
17 in this matter.

18 MR. MITCHELL: Good morning. My name is
19 Rob Mitchell. I'm with the Tennessee Attorney
20 General's Office. I represent the two defendants
21 in this case, Commissioner Tony Parker and Warden
22 Tony Mays, as well as the nonparty deponent today,
23 the Pharmacist.

24 With me in the office is Scott
25 Sutherland. Other cocounsel that are listening in

1 are Dean Atyia, Mallory Schiller, Cody Brandon.
2 And cocounsel Miranda Jones may or may not tune in
3 on portions during the day.

4 Now is as good a time as ever, Hayden,
5 just to go over what we talked about off record.
6 Objections such as expert opinion, lack of
7 foundation, lack of personal knowledge, we're
8 agreeing those are all kind of form objections for
9 purposes of this deposition. Is that your
10 understanding?

11 MS. NELSON-MAJOR: Yes.

12 MR. MITCHELL: Okay. Great.

13 MS. NELSON-MAJOR: And before we get
14 started, I want to put one other sort of
15 housekeeping matter on the record, as well.

16 That we are primarily using deposition
17 exhibits that were used previously in depositions,
18 with the exception of three that I provided to
19 Mr. Mitchell last night.

20 PHARMACIST,
21 having been first duly sworn, testified as follows:

22 MS. NELSON-MAJOR: Okay. Good morning,
23 Pharmacist. As I stated, my name is Hayden
24 Nelson-Major, and I represent the plaintiff, Terry
25 King, in this matter of King v. Parker which is

1 currently pending in the Middle District of
2 Tennessee.

3 We've already identified everyone else
4 who is present on this Zoom, and I just wanted to
5 take a minute to confirm that the court reporter
6 and videographer can hear the answers and
7 questions. But if you're having trouble at any
8 point, please let me know and we'll troubleshoot.
9 Great.

10 EXAMINATION

11 BY MS. NELSON-MAJOR:

12 Q. So, Pharmacist, you understand that you
13 are here today to answer questions related to the King
14 case; is that right?

15 A. I understand, yes.

16 Q. Thank you for taking time to answer those
17 questions for us today.

18 As you know, we're going to take this
19 deposition on an anonymous basis. What that means is I
20 will not ask you any questions intended to make you
21 disclose your identity.

22 To be fair, though, my understanding is
23 that you are the pharmacist that works with the Tennessee
24 Department of Correction in supplying lethal injections
25 for use in executions. Is that right?

1 A. Yes.

2 Q. Do you have any other roles in
3 Tennessee's execution protocol?

4 A. No.

5 MR. MITCHELL: Object to the form. You
6 can answer.

7 BY MS. NELSON-MAJOR:

8 Q. Pharmacist, could you repeat your answer?
9 I think you got cut off a bit.

10 A. No.

11 Q. Let me go over a few ground rules before
12 we get started. Have you ever had your deposition
13 taken before?

14 A. No.

15 Q. Someone from the Attorney General's
16 Office may have gone over some of these issues with
17 you, but I want to make sure we're on the same page.
18 Do you understand that you're under oath?

19 A. Yes.

20 Q. And you understand that means that you
21 need to tell the truth to the best of your ability?

22 A. Yes.

23 Q. Have you taken any medications today?

24 A. No.

25 Q. Have you consumed any alcohol or drugs in

1 the past 24 hours?

2 A. I had one beer yesterday.

3 Q. Is there any reason you cannot testify
4 truthfully or accurately today?

5 A. No.

6 Q. And are you represented by counsel today?

7 A. Yes.

8 Q. And who is that?

9 A. I've spoken with Mr. Mitchell and
10 Mr. Sutherland.

11 Q. Okay. Even though this deposition is
12 being taken over Zoom the court reporter is making a
13 record based on what you say, so you will need to
14 respond to the questions verbally rather than making a
15 gesture.

16 In order for the court reporter to
17 accurately record the testimony, please wait for me to
18 finish my question before you give an answer. And I
19 will do my best to do the same for you; I'll wait for
20 you to finish giving an answer before I ask the next
21 question.

22 If you don't understand any of my
23 questions, please let me know and I'll try to restate it
24 a different way. If you do answer the question, I will
25 assume you understood the question.

1 If you do need to take break at any point,
2 just let me know; however, if there is a question
3 pending, I'll ask that you answer that question before we
4 go off the record.

5 From time to time, Mr. Mitchell or
6 Mr. Sutherland -- Mr. Mitchell, he's the only one on the
7 call -- may object to questions that I ask. But you'll
8 still need to answer those questions unless the objection
9 is based on an assertion of privilege or statute.

10 Do you understand that?

11 A. Yes.

12 Q. Do you have any questions for me before
13 we get started?

14 A. I do not.

15 Q. Okay. What did you do to prepare for
16 this deposition?

17 A. I reviewed USP compounding sterile 797.
18 I reviewed the Tennessee state statutes as well as
19 [State] state statutes.

20 Q. Can you tell me why you reviewed [State]
21 state statutes in preparing for this deposition?

22 MR. MITCHELL: I'm going to object
23 pursuant to the protective order and instruct the
24 witness not to answer; specifically Page ID 5116,
25 DE107.

1 BY MS. NELSON-MAJOR:

2 Q. Were you directed to review those
3 materials by anyone?

4 A. Just to -- by -- by my attorneys, just to
5 understand my background, my -- my job.

6 Q. How many times -- when you say
7 "attorneys," is that Mr. Mitchell and Mr. Sutherland?

8 A. Correct.

9 Q. And how many times did you meet with
10 Mr. Mitchell and Mr. Sutherland?

11 A. Twice.

12 Q. And how long were those meetings?

13 A. An hour.

14 Q. They were each an hour?

15 A. Yes, ma'am.

16 Q. Okay. And when were those meetings?

17 A. The last one was this past Monday. The
18 time before, I believe, was last Wednesday.

19 Q. Besides Mr. Mitchell and Mr. Sutherland,
20 was anyone else present at those meetings?

21 A. I believe there was one other gentlemen;
22 but I apologize, I don't remember his name.

23 MR. MITCHELL: May the record reflect it
24 was cocounsel Cody Brandon from the Attorney
25 General's Office.

1 MS. NELSON-MAJOR: Thank you,
2 Mr. Mitchell.

3 BY MS. NELSON-MAJOR:

4 Q. You listed three documents that -- or
5 three sets of documents that you had reviewed in the
6 course of these preparations: USP 797, Tennessee
7 statutes, [State] statutes.

8 Did you review any other documents?

9 A. No, ma'am.

10 Q. Okay. Did any of those documents that
11 you reviewed, those three sets, refresh your
12 recollection as to any events or matters related to
13 this case in particular?

14 A. No, ma'am.

15 Q. Okay. Outside of those three sets of
16 documents that you reviewed with your attorneys, did
17 you review any other materials?

18 A. No.

19 Q. And did you meet with anyone other than
20 Mr. Mitchell and Mr. Sutherland and Mr. Brandon?

21 A. No.

22 Q. Okay. Did you review any transcripts of
23 any of the depositions already conducted in this
24 matter?

25 A. I have not.

1 Q. Did you review any of the court filings
2 in this case?

3 A. No.

4 Q. And did anyone else consult with you to
5 prepare for another deposition in this case?

6 A. No.

7 Q. So how much time in total do you estimate
8 that you spent preparing for this deposition?

9 A. Apart from the meetings, 30 minutes.

10 Q. 30 minutes? And what did those 30
11 minutes consist of?

12 A. Just reviewing the three documents that
13 we spoke of.

14 Q. Did you talk to anyone else at the
15 pharmacy at which you are currently employed to prepare
16 for this deposition?

17 A. Just my CFO, to inform her.

18 Q. Your CFO? So you didn't talk about any
19 substance, just informing her of the nature of the
20 deposition?

21 A. Correct.

22 Q. So you -- so you didn't have any
23 discussions with any other employees of the pharmacy?

24 A. I did not.

25 Q. And can you tell me in general terms what

1 that conversation with the CFO consisted of?

2 MR. MITCHELL: And I'm going to object to
3 that question, pursuant to the protective order.
4 There may be another way to ask it,
5 Ms. Nelson-Major, that I can think of, but I am
6 going to object and instruct the witness not to
7 answer that specific question.

8 BY MS. NELSON-MAJOR:

9 Q. Let me try it in a different way. Did
10 you discuss with the CFO any of the activities or --
11 that you have conducted in preparing drugs for the
12 Tennessee Department of Correction for use in the
13 lethal injection protocol?

14 A. I did not.

15 Q. So the conversation was strictly limited
16 to informing the CFO of the fact that you were going to
17 be deposed today?

18 MR. MITCHELL: Object to form.

19 BY MS. NELSON-MAJOR:

20 Q. You can go ahead and answer, Pharmacist.

21 A. Correct.

22 Q. Okay. I want to ask you a couple of
23 questions about your education and training. What is
24 your highest level of education?

25 A. A doctorate in pharmacy.

1 Q. And how many years of graduate school is
2 required to earn a doctorate in pharmacy?

3 A. It was a total six-year program.

4 Q. And is that program divided into
5 different parts? When you say a total of six years,
6 can you break that down to me?

7 A. It's not the school I went to. It's just
8 six years straight, no undergrad.

9 Q. And what type of training do you get in
10 the course of that degree?

11 A. You get training in biology, chemistry,
12 understanding anatomy. How drugs work, how to make
13 them. Compounding courses. Training in immunizing.

14 Q. And in the course of those studies, how
15 many courses did you take that were relevant to
16 sterile -- or excuse me -- to compounding in general?

17 A. Just compounding in general, there was
18 two years total, so there was one class in each
19 semester.

20 Q. Okay. And were those courses
21 concentrated on sterile compounding or nonsterile
22 compounding?

23 A. It was a mixture of both. I can't
24 exactly recall how much time was given to each.

25 Q. Fair enough. How long ago,

1 approximately, did you earn that degree?

2 MR. MITCHELL: Objection. Pursuant to
3 the protective order, I'm going to instruct the
4 Pharmacist not to answer that question.

5 BY MS. NELSON-MAJOR:

6 Q. Let me state it another way. Have you
7 been a practicing pharmacist for more than five years?

8 MR. MITCHELL: I'm still going to object,
9 pursuant to Page ID 5116, and instruct the
10 Pharmacist not to answer.

11 BY MS. NELSON-MAJOR:

12 Q. Have you completed any coursework beyond
13 your doctorate in pharmacy?

14 A. Yes.

15 Q. And what is that coursework?

16 A. For sterile compounding, you have to get
17 extra certification to be able to compound. So that
18 was an additional training I did on my own.

19 Q. And what agency or body governs that
20 certification process?

21 MR. MITCHELL: I'm going to object,
22 pursuant to the protective order, to the extent
23 that it requires naming a proper noun, a specific
24 noun.

25 Pharmacist, if you can answer in general

1 terms, I'll permit you to answer. But if you
2 can't, just say you cannot.

3 BY MS. NELSON-MAJOR:

4 Q. Let me try restating it in a different
5 fashion. Without naming the state, was it a state or a
6 professional organization that provided that
7 certificate to you?

8 A. It's a professional organization.

9 Q. And how long is that certificate valid
10 for?

11 A. There's no expiration.

12 Q. So you don't have to renew that
13 certificate?

14 A. Not the certificate itself.

15 Q. Is there something else that you have to
16 renew?

17 A. Every two years, when you recertify your
18 license, you just have to do continuing education to
19 maintain it.

20 Q. Now, you're referring to your -- your
21 pharmacist license?

22 A. Yes.

23 Q. And what are the continuing education
24 requirements for renewing your pharmacist license?

25 A. You just have to meet a number of hours

1 and then whatever additional requirements that are
2 listed.

3 Q. Have any of your continuing education
4 requirements been focused on compounding?

5 A. Yes.

6 Q. When was the most recent continuing
7 education course related to compounding that you took?

8 A. Six months ago.

9 Q. And when you first obtained your
10 pharmacist license, did you have to take an exam of
11 some sort?

12 A. Yes.

13 Q. Can you describe that exam to me, what it
14 entails?

15 A. Yes, there's two parts. You have to take
16 a law exam and then NAPLEX, which is just the pharmacy
17 portion.

18 Q. Did you say log exam or law?

19 A. Law.

20 Q. Law? And what -- what is that? Does
21 that entail sort of the provisions and legal provisions
22 that govern the practice of pharmacy?

23 A. Correct.

24 Q. Okay. Are you currently a Board of
25 Pharmacy Board-certified sterile compounding

1 pharmacist?

2 A. Yes.

3 Q. Do you currently hold a certification
4 from the American Society of Health-System Pharmacists?

5 A. No.

6 Q. So that's --

7 A. I'm sorry. I'm sorry, I guess the
8 terminology you use, "Board certified," that is
9 correct. I was wrong. I am sorry. I just got the
10 certificate to perform sterile compounding. I am not
11 Board certified.

12 Q. And my last question was whether you hold
13 a certificate from the American Society of
14 Health-Systems Pharmacists?

15 A. I do not.

16 Q. So your certification to compound was not
17 issued by that professional organization?

18 A. I don't believe it is, but I -- I
19 apologize, I could be wrong.

20 Q. Do you hold any other professional
21 licenses outside of the field of pharmacy?

22 A. I do not.

23 Q. Do you have any military training?

24 A. I do not.

25 Q. Beyond your pharmacy license and

1 doctorate in pharmacy, do you have any other medical
2 training?

3 A. No.

4 Q. Do you participate in any volunteer
5 programs? And you can describe them generally, if you
6 do.

7 MR. MITCHELL: I'm actually going to
8 object and instruct the Pharmacist not to answer
9 that question, pursuant to the protective order.

10 BY MS. NELSON-MAJOR:

11 Q. Have you received any training in
12 connection with executions?

13 A. No.

14 Q. Are you currently employed?

15 A. Yes.

16 Q. Without naming the name of your current
17 employer, what kind of entity is it? Is it a
18 for-profit business or a pharmacy within a hospital
19 system?

20 A. It's a retail pharmacy.

21 Q. You don't own this business?

22 A. No.

23 Q. Does this business sell commercially
24 manufactured drugs?

25 MR. MITCHELL: Object to the form.

1 BY MS. NELSON-MAJOR:

2 Q. You can answer, Pharmacist.

3 A. They do.

4 Q. That's a "Yes?"

5 A. Yes.

6 Q. And compounded drugs, as well?

7 A. Yes.

8 Q. Are the drugs that your -- that you
9 compound exempt from compliance with current Good
10 Manufacturing Practice requirements?

11 MR. MITCHELL: Object to the form.

12 BY MS. NELSON-MAJOR:

13 Q. You can answer, Pharmacist.

14 A. I'm sorry, can you say the question
15 again?

16 Q. Of course. It was a long one.

17 Are the drugs that you compound exempt from
18 compliance with current Good Manufacturing Practice
19 requirements?

20 MR. MITCHELL: Object to the form.

21 THE WITNESS: I can't answer with
22 certainty.

23 BY MS. NELSON-MAJOR:

24 Q. So you are unaware of whether the drugs
25 that you manu- -- that you compound are subject to

1 current Good Manufacturing Practice?

2 MR. MITCHELL: Same objection.

3 BY MS. NELSON-MAJOR:

4 Q. You can answer, Pharmacist.

5 A. I'm not aware that they're exempt.

6 Q. Is it your belief that they apply?

7 A. Yes.

8 MR. MITCHELL: Same objection.

9 BY MS. NELSON-MAJOR:

10 Q. So it is your understanding that the
11 drugs that you compound are exempt -- or, I'm sorry,
12 are subject to current Good Manufacturing Practice
13 requirements?

14 A. Correct.

15 MR. MITCHELL: Same objection.

16 BY MS. NELSON-MAJOR:

17 Q. Can you restate your answer, Pharmacist?

18 A. Yes.

19 Q. Has your pharmacy been inspected by the
20 FDA?

21 MR. MITCHELL: I'm going to object,
22 pursuant -- you can answer. You can answer.

23 THE WITNESS: No.

24 BY MS. NELSON-MAJOR:

25 Q. So has your pharmacy been inspected by

1 the state board of pharmacy in which it is located?

2 And I'm not asking you to name the state in which it's
3 located.

4 MR. MITCHELL: Object to the form.

5 THE WITNESS: Yes.

6 BY MS. NELSON-MAJOR:

7 Q. When was the most recent inspection?

8 MR. MITCHELL: I'm going to object,
9 pursuant to the protective order, and instruct the
10 Pharmacist not to answer.

11 BY MS. NELSON-MAJOR:

12 Q. Is your pharmacy a registered 503(b)
13 outsourcing facility?

14 MR. MITCHELL: I'm going to object, again
15 pursuant to the protective order, and instruct the
16 Pharmacist not to answer.

17 BY MS. NELSON-MAJOR:

18 Q. How long have you been with your current
19 employer?

20 A. Three years.

21 Q. And what's your current job title?

22 A. Pharmacist in charge.

23 Q. And what are your duties as the
24 pharmacist in charge?

25 A. Hiring the technicians, making sure their

1 licenses are valid. Making sure the pharmacy's license
2 is valid. Training requirements. And running the
3 pharmacy's daily duties.

4 Q. And can you describe for me more how you
5 ensure that the pharmacy's license is valid?

6 A. Just renewing the license itself and
7 making sure we maintain the requirements before
8 renewal.

9 Q. How many other pharmacists are employed
10 at your pharmacy?

11 MR. MITCHELL: I'm going to object
12 pursuant to the protective order and instruct the
13 Pharmacist not to answer.

14 BY MS. NELSON-MAJOR:

15 Q. And in the three years you've been with
16 this employer, have you always held the position of
17 pharmacist in charge?

18 A. Yes.

19 Q. How many people report to you in that
20 position?

21 MR. MITCHELL: Again, I'm going to object
22 pursuant to the protective order and instruct the
23 Pharmacist not to answer.

24 BY MS. NELSON-MAJOR:

25 Q. Who do you report to?

1 MR. MITCHELL: I'm going to object,
2 pursuant to the protective order, to the extent
3 that requires naming a proper noun or identifying
4 a person.

5 MS. NELSON-MAJOR: I'm not --

6 MR. MITCHELL: If you can answer without
7 doing that, you can answer.

8 MS. NELSON-MAJOR: I apologize,
9 Mr. Mitchell, for interrupting.

10 BY MS. NELSON-MAJOR:

11 Q. Pharmacist, without giving an actual
12 name, can you describe who you report to in your
13 current position?

14 A. The CFO and the CEO.

15 Q. Is there anyone over you who supervises
16 the technical, sort of scientific, aspects of your
17 duties?

18 MR. MITCHELL: Objection.

19 BY MS. NELSON-MAJOR:

20 Q. You can answer, Pharmacist.

21 A. No.

22 Q. Does your position require any special
23 training beyond your pharmacy degree?

24 MR. MITCHELL: Objection.

25 THE WITNESS: No.

1 BY MS. NELSON-MAJOR:

2 Q. And before your employment with this
3 particular pharmacy, what was your previous
4 employment --

5 MR. MITCHELL: I'm going to --

6 BY MS. NELSON-MAJOR:

7 Q. -- without naming the entity at which you
8 worked for?

9 A. It was a home infusion pharmacy.

10 Q. And how long were you employed with that
11 home infusion pharmacy?

12 MR. MITCHELL: I'm going to again object,
13 pursuant to the protective order, and instruct the
14 Pharmacist not to answer.

15 BY MS. NELSON-MAJOR:

16 Q. During your tenure at this home infusion
17 pharmacy, did you compound drugs?

18 A. Yes.

19 Q. Both sterile and nonsterile compounded
20 preparations?

21 A. Only sterile.

22 Q. And were you a pharmacist or the
23 pharmacist in charge at that home infusion pharmacy?

24 A. Pharmacist.

25 Q. All right. I want to ask you a couple of

1 questions about your initial contact with the Tennessee
2 Department of Correction. Does your pharmacy supply
3 the Tennessee Department of Correction with drugs for
4 use in executions conducted by lethal injection?

5 A. Yes.

6 Q. And if I refer to the Tennessee
7 Department of Correction as "TDOC," will you understand
8 what I'm referring to?

9 A. Yes.

10 Q. Are you the person at your pharmacy
11 responsible for filling TDOC's order for lethal
12 injection drugs?

13 A. Yes.

14 Q. Have you provided TDOC with commercially
15 manufactured drugs for use in executions?

16 A. Yes.

17 Q. Which drugs? Which commercially
18 manufactured drugs have you applied -- excuse me,
19 supplied to TDOC for use in executions?

20 A. Vecuronium bromide.

21 Q. Is that the only commercially
22 manufactured drug you supply to TDOC for use in
23 executions?

24 A. Yes.

25 Q. Have you supplied TDOC with compounded

1 drugs for use in executions?

2 A. Yes.

3 Q. Which drugs?

4 A. Midazolam and potassium chloride.

5 Q. Have you ever provided commercially
6 manufactured versions of either of those drugs to TDOC
7 for use in executions?

8 A. No.

9 Q. Okay. When was the first time that you
10 filled an order from TDOC for drugs to be used in an
11 execution?

12 A. I believe that was in 2018.

13 Q. Are you the only pharmacist at your
14 company that fills TDOC's orders for lethal injection
15 chemicals?

16 A. Yes.

17 Q. And are you the only pharmacist who
18 compounds drugs for TDOC for use in executions?

19 A. No.

20 Q. So other pharmacists are involved in the
21 compounding of lethal injection drugs for TDOC?

22 A. Not pharmacists.

23 Q. Can you describe to me the -- the role of
24 the other people involved in that process?

25 A. Pharmacy technician.

1 Q. And are those technicians under your
2 supervision when they're fulfilling those orders?

3 A. Yes.

4 Q. And approximately how many technicians
5 are involved in filling those orders?

6 A. One.

7 Q. And has it always been the same
8 technician involved in helping you fill those orders?

9 A. Yes.

10 Q. I would like to ask you some questions
11 about how you came to supply TDOC with lethal injection
12 drugs. When were you first contacted about supplying
13 drugs for use in executions?

14 A. Three years ago, when I was -- when I
15 started at the company.

16 Q. And who first, without naming names,
17 talked to you about supplying TDOC with lethal
18 injection drugs?

19 A. The former owner.

20 Q. The former owner of your pharmacy?

21 A. Correct.

22 Q. And that person is no longer the owner of
23 your pharmacy?

24 A. They are not.

25 Q. Can you describe to me that initial

1 conversation you had with the former pharmacy owner?

2 MR. MITCHELL: Object to the form. You
3 can answer.

4 THE WITNESS: He asked if I would be
5 willing to compound the medications and do the
6 additional training of getting my license with the
7 State of Tennessee in order to do that.

8 BY MS. NELSON-MAJOR:

9 Q. And what was your response?

10 A. "Yes."

11 Q. And in that conversation, did he
12 specifically tell you which drugs you would be
13 compounding for TDOC?

14 A. I don't recall.

15 Q. Was there anyone else present for that
16 conversation?

17 A. No.

18 Q. Without naming names, did the pharmacy --
19 former pharmacy owner tell you who from TDOC had
20 contacted him about this request?

21 A. No.

22 Q. And what was your response to that
23 request from the pharmacy owner?

24 A. That I would -- that I would do it.

25 Q. Are you aware of, prior to your

1 involvement -- involvement, whether your pharmacy was
2 supplying drugs to TDOC for use in executions?

3 MR. MITCHELL: Object to form.

4 THE WITNESS: I am not aware.

5 BY MS. NELSON-MAJOR:

6 Q. Is it your belief that this was the first
7 time that TDO- -- excuse me -- that your pharmacy had
8 provided drugs to TDOC?

9 A. From my understanding, yes.

10 Q. And this initial conversation you had
11 with your pharmacy owner, was that in person or over
12 the phone, email?

13 A. In person.

14 Q. Did you ever have any conversations with
15 the CFO about supplying drugs to TDOC?

16 A. She's aware that we do, but not questions
17 pertaining to it.

18 Q. So you haven't had any direct
19 conversations with the CFO about providing lethal
20 injection drugs to TDOC?

21 MR. MITCHELL: Objection.

22 THE WITNESS: No, ma'am.

23 BY MS. NELSON-MAJOR:

24 Q. What about the CEO?

25 A. No.

1 Q. What about any other members of the
2 administration or management team of your pharmacy?

3 MR. MITCHELL: Object to form.

4 THE WITNESS: No.

5 BY MS. NELSON-MAJOR:

6 Q. So the former pharmacy owner is the only
7 person that you discussed this request with?

8 A. Yes.

9 Q. And you -- you earlier mentioned that
10 you've been working with the same pharmacy technician
11 in preparing these drugs. Did you have a conversation
12 with that person about the TDOC's request?

13 MR. MITCHELL: Same objection.

14 THE WITNESS: Yes.

15 BY MS. NELSON-MAJOR:

16 Q. And what was that conversation?

17 A. Just asking if he'd be comfortable making
18 them.

19 Q. And what was his response?

20 A. "Yes."

21 Q. And you said that there were a number of
22 things you had to do in order to be -- obtain
23 authorization to prepare the drugs for TDOC. I believe
24 you said you had to obtain a license from the State of
25 Tennessee. Can you describe to me what that process

1 entailed?

2 MR. MITCHELL: I'm going to object,
3 pursuant to the protective order, but it's kind of
4 a partial objection. Just, Pharmacist, if you --
5 if you can describe that without really giving
6 identification about who you are or where you're
7 located or what your pharmacy is, then you can
8 answer. If you can't, please let us know.

9 THE WITNESS: I believe I can answer, if
10 you'll just give me a moment.

11 MS. NELSON-MAJOR: Take all the time you
12 need.

13 (Pause.)

14 THE WITNESS: It's just an application, I
15 believe it's two or three pages, of the kind of
16 pharmacist you are. You're just submitting an
17 application for the pharmacy itself.

18 BY MS. NELSON-MAJOR:

19 Q. And Pharmacist, in trying to remember
20 that information, were you just looking at some of the
21 documents you have with you?

22 A. No, I didn't look at anything.

23 Q. And if you remember, I believe you said
24 2018. When approximately did you have that
25 conversation with the pharmacy owner?

1 A. I believe it was in April or May.

2 Q. April or May of 2018?

3 A. Correct.

4 Q. Could you please pull up Exhibit 46. Let
5 me know when you have it up.

6 A. I have it.

7 Q. And take a moment to -- to look it over.
8 You don't need to read it, I just want you to get a
9 sense of what the document looks like.

10 (Pause.)

11 BY MS. NELSON-MAJOR:

12 Q. Have you seen this document before?

13 A. Yes.

14 Q. What is it?

15 A. A Pharmacy Services Agreement between
16 ourselves and Tennessee.

17 Q. Were you involved in the drafting of this
18 document?

19 A. No.

20 Q. Do you know whether anyone associated
21 with your pharmacy was involved in drafting this
22 document?

23 A. I'm not aware.

24 Q. Can you turn to the last page of this
25 document? Do you see what appears to be a redacted

1 signature block at the bottom of the page?

2 A. Yes.

3 Q. Is that your signature on the redacted
4 signature block?

5 A. It is not.

6 Q. Without naming names, do you know who at
7 your pharmacy signed this agreement on behalf of your
8 pharmacy?

9 A. No.

10 Q. Do you have authority in your role as
11 pharmacist in charge to sign contracts on behalf of
12 your pharmacy?

13 A. Yes.

14 Q. I'd like you to pull up Exhibit No. 6.

15 A. I have it.

16 Q. This is an email dated September 7, 2017.
17 Have you seen this email before?

18 A. No.

19 Q. So you didn't write or receive this
20 email?

21 A. No.

22 Q. Can you pull up Exhibit No. 7, please.

23 A. I have it.

24 Q. It's another email chain dated September
25 7th, 2017. Did you write or receive any of these

1 emails?

2 A. No.

3 Q. Now please pull up Exhibit No. 8.

4 A. I have it.

5 Q. It's another email chain from September
6 17th, 2017. Did you write or receive any of these
7 emails?

8 A. No.

9 Q. Okay. And then Exhibit No. 9, please.

10 A. I have it.

11 Q. This is an email chain dated September
12 21st, 2017. Did you write or receive any of these
13 emails?

14 A. No.

15 Q. In your role as pharmacist in charge do
16 you have, in general, contact with potential customers?

17 A. Yes.

18 Q. Are you involved in soliciting business
19 for your pharmacy?

20 A. Yes.

21 Q. What is the pharmacy owner's -- former
22 pharmacy owner's involvement in soliciting business on
23 behalf of the pharmacy when he was employed with the
24 pharmacy, if you know?

25 MR. MITCHELL: Object to both form and to

1 the extent it would lead to identifying
2 information.

3 Pharmacist, let us know if you think you
4 can answer without identifying who the former
5 pharmacy owner is.

6 THE WITNESS: Yes, I -- I can answer.

7 BY MS. NELSON-MAJOR:

8 Q. And what was that?

9 A. He's able to contact, reach out to
10 providers in any capacity to gain more business for the
11 pharmacy.

12 Q. Did you have any direct contact with
13 representatives from TDOC related to the provision of
14 lethal injection chemicals?

15 A. I'm sorry, can you say that again?

16 Q. Did you ever talk to anyone at TDOC about
17 their request to your pharmacy for lethal injection
18 chemicals?

19 A. Yes.

20 Q. And without naming names, who were those
21 people?

22 A. The drug procurer.

23 Q. When did you first have contact with the
24 drug procurer?

25 A. In 2019.

1 Q. So you didn't have any contact with the
2 drug procurer about the initial request to supply
3 execution drugs to TDOC?

4 A. No.

5 Q. If you are aware, did that contact flow
6 through the pharmacy owner?

7 A. At the time, yes.

8 Q. And you say "at the time"; was there a
9 period of time where that changed?

10 A. No. Just that initial introduction was
11 through the past owner.

12 Q. And after the pharmacy owner left, who
13 became the point person in your pharmacy for contact
14 with the TDOC?

15 A. I did.

16 Q. When did that occur?

17 A. I believe December of 2019.

18 Q. Since the departure of the pharmacy --
19 pharmacy owner, has anyone else at your pharmacy had
20 contact with TDOC that you're aware of?

21 A. No.

22 Q. So post December 2019, you are the sole
23 person at your pharmacy who has contact with TDOC?

24 MR. MITCHELL: Object.

25 THE WITNESS: Yes.

1 BY MS. NELSON-MAJOR:

2 Q. So I want to ask you a couple of
3 questions about the conversations you've had with the
4 drug procurer. Have you had email conversations?

5 A. Yes.

6 Q. In-person meetings?

7 A. No.

8 Q. Phone calls?

9 A. Yes.

10 Q. And what are the nature -- the nature of
11 those conversations?

12 MR. MITCHELL: Object to form.

13 BY MS. NELSON-MAJOR:

14 Q. You can answer, Pharmacist.

15 A. Conversations are just about relaying to
16 me the medications will need to be made at a certain
17 time, the timing of when we would have them sent to
18 TDOC. The availability to make sure we have things in
19 stock.

20 Q. Have you ever had a conversation with the
21 drug procurer about any drug besides midazolam,
22 potassium chloride, or vecuronium bromide?

23 MS. NELSON-MAJOR: Object to form.

24 THE WITNESS: Yes.

25 BY MS. NELSON-MAJOR:

1 Q. And what other drugs have you discussed?

2 A. Pentobarbital.

3 Q. Is that the only other drug you've
4 discussed?

5 A. Yes.

6 Q. And what did you discuss in relation to
7 pentobarbital?

8 MS. NELSON-MAJOR: Objection.

9 THE WITNESS: Just asking if it's
10 available for us to order.

11 BY MS. NELSON-MAJOR:

12 Q. And what did you do in response to that
13 request?

14 A. Try to see if I could order it.

15 Q. And when was that request made to you?

16 A. I don't have a specific time, but the
17 times -- every time he would ask for midazolam or
18 potassium chloride or vecuronium he would also ask if I
19 was able to procure that, as well.

20 Q. Do you know the first time, ballpark,
21 that the drug procurer asked you to look for
22 pentobarbital?

23 A. It would have been in our -- probably our
24 first discussion back in December of 2019.

25 Q. And when you say, "He asked me to look

1 for pentobarbital" -- or "asked me about pentobarbital
2 every time they placed an order for drugs," do you mean
3 every time they placed an order for drugs in relation
4 to an execution?

5 A. Yes, in preparation, just to make sure we
6 could order or could make whatever he was going to need
7 at the time.

8 Q. And these requests, have these been over
9 email or over the phone?

10 A. Over the phone.

11 Q. Do you document those conversations
12 anywhere?

13 A. I do not.

14 Q. Approximately how many times do you
15 believe that the drug procurer has asked you to
16 ascertain the availability of pentobarbital?

17 A. Five.

18 Q. Five times? If you recall, when was the
19 last time the drug procurer asked you to ascertain the
20 availability of pentobarbital?

21 A. This past March of 2021.

22 Q. And in response to these requests, what
23 do you do? What have you done?

24 A. Searched the database that I use in order
25 to search for medications to see if it would be

1 available for me to order.

2 Q. And is that database commercially
3 manufactured drugs?

4 A. Yes.

5 Q. Is it a database strictly -- excuse me.
6 Is that database only commercially
7 manufactured drugs?

8 A. It's possible that they also have bulk
9 items. I can't say for certain.

10 Q. What do you mean by "bulk items?"

11 A. Bulk items are medications that can be
12 used to compound in a powder form.

13 Q. Are you referring to an active
14 pharmaceutical ingredient, or API?

15 A. Yes, ma'am.

16 Q. What -- is this database something that
17 your pharmacy maintains or is it maintained by a
18 different entity?

19 MR. MITCHELL: I'm -- you can answer.

20 Sorry, withdraw -- withdraw the pause.

21 THE WITNESS: A different entity.

22 BY MS. NELSON-MAJOR:

23 Q. Without naming the name of the state, if
24 it's maintained by a state agency, is this maintained
25 by a state or federal agency?

1 MR. MITCHELL: And now -- now I'm going
2 to object and instruct the Pharmacist not to
3 answer, pursuant to the protective order, 5116.

4 BY MS. NELSON-MAJOR:

5 Q. Let me try restating this. Is this
6 database maintained by a private entity?

7 MR. MITCHELL: Same objection. Don't
8 answer.

9 BY MS. NELSON-MAJOR:

10 Q. Is this a database that you have
11 responsibility for maintaining?

12 A. It's not.

13 Q. So it's not your pharmacy's own internal
14 database?

15 A. It's not.

16 Q. Does this database include drugs that are
17 available from foreign sources?

18 A. I'm sorry, what do you mean by "foreign?"

19 Q. Manufacturers or drug producers located
20 outside of the United States.

21 MR. MITCHELL: I'm going to object to
22 form, but you can answer, Pharmacist.

23 THE WITNESS: It may, if the manufacturer
24 itself makes them out of the country.

25 BY MS. NELSON-MAJOR:

1 Q. This database; the entries in it, are
2 they provided by the people who are actually
3 manufacturing the drugs?

4 MR. MITCHELL: Well, again, object to the
5 form. Instruct -- or not the form. Objection
6 pursuant to the protective order and instruct the
7 Pharmacist not to answer.

8 BY MS. NELSON-MAJOR:

9 Q. So other than searching this database,
10 have you done anything else in response to the drug
11 procurer's request that you ascertain the availability
12 of pentobarbital?

13 A. No.

14 Q. You haven't made any phone calls?

15 A. No.

16 Q. You haven't emailed any other suppliers?

17 A. No.

18 Q. Have you done any research on any legal
19 provisions that might apply to the manufacture or
20 importation of pentobarbital?

21 A. No.

22 Q. Has your pharmacy ever imported API from
23 overseas?

24 MR. MITCHELL: I'm going to object,
25 pursuant to the protective order, and instruct the

1 Pharmacist not to answer that.

2 BY MS. NELSON-MAJOR:

3 Q. Did you ever talk to the former pharmacy
4 owner about importing API from overseas?

5 MR. MITCHELL: And I'm going to object to
6 the form of that question. I'm also going to
7 instruct the Pharmacist not to answer that
8 specific question. If it's related to TDOC, then
9 I will allow the Pharmacist to answer.

10 BY MS. NELSON-MAJOR:

11 Q. Did you ever have a conversation with the
12 former pharmacy owner about potentially importing API
13 for use in compounding drugs for TDOC?

14 MR. MITCHELL: Object to the form. You
15 can answer, Pharmacist.

16 THE WITNESS: No.

17 BY MS. NELSON-MAJOR:

18 Q. Are you aware of whether the drug
19 procurer ever made a similar request to the drug owner
20 about ascertaining the availability of pentobarbital
21 for TDOC?

22 MR. MITCHELL: Same objection. Object to
23 form. Go ahead.

24 THE WITNESS: No.

25 BY MS. NELSON-MAJOR:

1 Q. Has anyone else at your pharmacy been
2 involved in searching for pentobarbital for TDOC's use?

3 MR. MITCHELL: Object to the form.

4 THE WITNESS: No.

5 BY MS. NELSON-MAJOR:

6 Q. And after you look up in this database,
7 what do you do with the information you find?

8 A. I relay to the drug procurer if I was
9 able to source it or not.

10 Q. And what have those searches yielded?

11 MR. MITCHELL: Object to the form. And
12 also object pursuant to the protective order, if
13 it's going to lead to identification of the
14 database.

15 Pharmacist, if you can answer without
16 identifying the database, then -- then we'll
17 permit you to answer.

18 THE WITNESS: I'm sorry, I forgot what
19 you asked me.

20 BY MS. NELSON-MAJOR:

21 Q. Fair enough. Let me try to restate the
22 question.

23 After you search in the database, what do
24 you do with the information you find in that database?

25 A. Just relay to the drug procurer I was

1 successful in what he asked me or if I wasn't -- I
2 wasn't successful.

3 Q. Have you been successful in locating in
4 this database a potential source of pentobarbital or
5 pentobarbital API?

6 A. No.

7 Q. So this database has no indication,
8 according to you, that there's a source of
9 pentobarbital?

10 A. Okay. Let me rephrase that. It's a --

11 MR. MITCHELL: Objection to form.

12 THE WITNESS: -- it's there, but I am
13 unable to -- what? I don't know how to answer.

14 BY MS. NELSON-MAJOR:

15 Q. Pharmacist, is there someone else in the
16 room with you?

17 A. No, I'm by myself.

18 Q. So let me break this down, and I might be
19 making this more complicated than it needs to be.

20 So you searched the database. What does
21 the database show you about availability of
22 pentobarbital or pentobarbital API? I'm not asking you
23 to name a source, I'm just asking you to tell me
24 whether you are -- what that information is.

25 A. It'll just have the detail of

1 pentobarbital itself. It'll say the name and then if
2 there is a quantity available. But then it goes deeper
3 into whether I'm able to order it or not.

4 Q. And what does that mean, whether you're
5 able to order it or not?

6 A. Depending on the type of pharmacy, they
7 distinguish if you're able to order certain medications
8 or not.

9 Q. And is that an issue of your licensing or
10 some regulation that would prevent you from ordering a
11 particular type of pentobarbital or pentobarbital API?

12 A. The license of the pharmacy.

13 Q. The license of the pharmacy? And so does
14 that database -- you had said you had found potential
15 sources of pentobarbital, or pentobarbital API. Which
16 one?

17 A. Of the pentobarbital.

18 Q. And the database shows available
19 pentobarbital, but it is unavailable to your pharmacy
20 for purchase; is that right?

21 A. From this last request, yes.

22 Q. Has that been different for previous
23 requests?

24 A. Sometimes there was none available. It
25 changes.

1 Q. So you said approximately five times
2 you've searched this database on behalf of TDOC. Can
3 you tell me how many times it was available but
4 unavailable to your pharmacy?

5 A. Just twice.

6 Q. And what about the other three times you
7 searched?

8 A. Showed a nonavailable quantity of zero.

9 Q. So the two times that the database showed
10 available pentobarbital, what kind of pharmacy could
11 purchase that pentobarbital?

12 A. A hospital.

13 Q. And what about a hospital enables it to
14 purchase the pentobarbital that was available those two
15 times you searched the database?

16 MR. MITCHELL: I'm sorry,
17 Ms. Nelson-Major, can you just repeat the
18 question? Sorry.

19 BY MS. NELSON-MAJOR:

20 Q. You said two times you searched the
21 database there was pentobarbital, but it was only
22 available for purchase by a hospital. Why only a
23 hospital, if you know?

24 A. I'm not -- I'm not aware.

25 Q. So there's simply an indication in the

1 database itself which tells you "This is only available
2 for a hospital?"

3 A. Yes.

4 Q. Are you doing anything -- and I might
5 have already asked this, so excuse me. Are you doing
6 anything beyond searching the database for
7 pentobarbital?

8 A. No.

9 Q. Did you -- and you didn't call either
10 two -- either source that was available at the time
11 that you searched?

12 A. No.

13 Q. Why are you limiting your search to this
14 database?

15 MR. MITCHELL: Object to form.

16 THE WITNESS: We have a license agreement
17 with that database.

18 BY MS. NELSON-MAJOR:

19 Q. Can you explain that to me, why that
20 limits your search?

21 MR. MITCHELL: I'm -- I'm going to object
22 pursuant to the protective order and instruct the
23 Pharmacist not to answer.

24 BY MS. NELSON-MAJOR:

25 Q. When you had the conversations with the

1 drug procurer about searching for pentobarbital, did
2 the drug procurer give you any instructions about how
3 to conduct your search?

4 A. No.

5 Q. Did you tell the drug procurer that twice
6 when you searched the database there was available
7 pentobarbital, but it was only available to a hospital?

8 A. Yes.

9 Q. And when you relayed that information to
10 the drug procurer, was that by email or by phone?

11 A. By phone.

12 Q. Do you recall when you ran those two
13 searches that yielded available pentobarbital?

14 A. This last search in March of 2021; but
15 the one prior, I do not remember.

16 Q. Have you ever contacted a Department of
17 Corrections outside of Tennessee about looking for
18 pentobarbital?

19 A. No.

20 Q. I'd like for you to turn to Exhibit 35.

21 A. Okay. I have it.

22 Q. And I'm sorry, I want to drop back to a
23 question that I asked you previously.

24 I want to ask you another question about
25 that licensing agreement. Does that licensing agreement

1 prohibit you from looking at other databases of available
2 pharmaceuticals?

3 MR. MITCHELL: Object to the form. And
4 -- and I'm going to -- I'm going to instruct the
5 Pharmacist not to answer. You --you can answer
6 "Yes"/"No," Pharmacist.

7 I'm sorry, I withdraw the objection.

8 THE WITNESS: I'm not aware.

9 BY MS. NELSON-MAJOR:

10 Q. In the course of your duties, do you ever
11 consult other databases of available pharmaceuticals?

12 A. Yes.

13 Q. How many other databases do you search --
14 have you -- are available to you when searching for
15 drugs?

16 A. Two.

17 Q. Did you consult --

18 A. I'm sorry, let me change that. Three.

19 Q. Three? Did you consult either of the
20 other two available databases when trying to ascertain
21 the availability of pentobarbital for TDOC?

22 A. No.

23 Q. Why not?

24 A. Those other databases are just for APIs.

25 Q. Were you confining your search to

1 pentobarbital, as opposed to pentobarbital API?

2 A. Yes.

3 Q. Why?

4 MR. MITCHELL: Object to form.

5 THE WITNESS: I was not aware that
6 pentobarbital was available as an API.

7 BY MS. NELSON-MAJOR:

8 Q. Did the drug procurer direct you to limit
9 your search to pentobarbital, as opposed to
10 pentobarbital API?

11 A. No.

12 Q. When you searched the one database that
13 you did search, did you search for available
14 pentobarbital API?

15 A. No.

16 Q. Sorry. Turning back to Exhibit 35 that I
17 asked you to pick up.

18 A. Yes, I have it.

19 Q. It's an email dated June 26th, 2019. Do
20 you recognize this email?

21 A. No.

22 Q. So you were not the recipient on this
23 email?

24 A. No.

25 Q. Do you see that it lists a number of

1 drugs: midazolam, digoxin, morphine sulfate, and
2 propanolol?

3 A. Yes, I see that.

4 Q. Are you familiar with each of these
5 drugs?

6 A. Yes.

7 Q. In the course of your employment, have
8 you fulfilled orders for each of these drugs?

9 A. You mean to anyone, or just to TDOC?

10 Q. To anyone.

11 MR. MITCHELL: Objection.

12 THE WITNESS: Yes.

13 BY MS. NELSON-MAJOR:

14 Q. Have you -- we know that you've
15 compounded midazolam. Have you compounded any of the
16 other drugs before?

17 MR. MITCHELL: Object to the form.

18 THE WITNESS: Just digoxin.

19 BY MS. NELSON-MAJOR:

20 Q. Digoxin? Were you ever asked to look
21 into the availability of digoxin for use by TDOC in
22 executions?

23 A. No.

24 Q. Do you have any reason to believe that
25 you couldn't obtain digoxin for use in executions?

1 MR. MITCHELL: I'll object to the form.

2 THE WITNESS: Not that I'm aware of, no.

3 BY MS. NELSON-MAJOR:

4 Q. Were you ever asked to look into the
5 availability of morphine sulfate for the use in
6 executions?

7 A. No.

8 Q. Do you have any reason to believe that
9 you couldn't obtain morphine sulfate for use in
10 executions?

11 MR. MITCHELL: Same objection.

12 THE WITNESS: No.

13 BY MS. NELSON-MAJOR:

14 Q. Were you ever asked to look into the
15 availability of propranolol for the use in executions?

16 A. No.

17 Q. Do you have any reason to believe that
18 you couldn't obtain propranolol for use in executions?

19 MR. MITCHELL: Same objection.

20 THE WITNESS: No.

21 BY MS. NELSON-MAJOR:

22 Q. Were you ever asked to look into the
23 availability of secobarbital?

24 A. No.

25 Q. Do you have any reason to believe you

1 couldn't obtain secobarbital for use in executions?

2 MR. MITCHELL: Form.

3 THE WITNESS: I'm not aware, no.

4 BY MS. NELSON-MAJOR:

5 Q. Were you asked to look into the
6 availability of ketamine for use in executions?

7 A. No.

8 Q. Do you have any reason to believe you
9 couldn't obtain ketamine for use in executions?

10 MR. MITCHELL: Form.

11 THE WITNESS: No.

12 BY MS. NELSON-MAJOR:

13 Q. Were you ever asked to look into the
14 availability of any other drugs that I haven't named
15 for use in executions by TDOC?

16 A. No.

17 Q. In the course of your duties with your
18 current employer, do you ever prepare drugs for oral
19 administration?

20 A. I'm sorry, can you say that again?

21 Q. Of course. In the course of your duties
22 with your current employer, do you ever prepare drugs
23 for oral administration?

24 A. Yes.

25 MS. NELSON-MAJOR: So would it be okay if

1 we took a break now for five, ten minutes?

2 MR. MITCHELL: Yes. Should we say --
3 could we do ten -- maybe 12, 10:15/11:15?

4 MS. NELSON-MAJOR: Sounds good.

5 THE VIDEOGRAPHER: We're off the record
6 at 10:03.

7 (Recess at 10:03 a.m. to 10:16 a.m.)

8 THE VIDEOGRAPHER: We're back on the
9 record. The time is 10:16 a.m.

10 BY MS. NELSON-MAJOR:

11 Q. Pharmacist, did you talk to anyone during
12 that break?

13 A. No.

14 Q. I just wanted to confirm something that
15 you said. Did you say that you have not searched for
16 pentobarbital API for TDOC?

17 A. Correct.

18 Q. Did you tell the drug procurer that you
19 were limiting your search to commercially manufactured
20 pentobarbital?

21 A. No.

22 Q. What did you tell the drug procurer about
23 how you were conducting drug researches?

24 MR. MITCHELL: Object to the form.

25 THE WITNESS: Nothing in detail, just

1 that I was searching.

2 BY MS. NELSON-MAJOR:

3 Q. And when you found those -- upon
4 searching twice, you found the available pentobarbital
5 but only available to hospitals, did you explain that
6 in detail to the drug procurer?

7 A. Yes.

8 Q. What was the -- can you tell me what you
9 told the drug procurer?

10 MR. MITCHELL: Object to the form. You
11 can answer.

12 THE WITNESS: Exactly what you said; that
13 I wasn't able to purchase it for the pharmacy,
14 since we weren't a hospital nor a block payment.

15 BY MS. NELSON-MAJOR:

16 Q. What was the drug procurer's response?

17 A. "Okay."

18 Q. The drug procurer didn't suggest any
19 followup after you conveyed that information?

20 MR. MITCHELL: Objection.

21 THE WITNESS: No.

22 BY MS. NELSON-MAJOR:

23 Q. Did the drug procurer at any point tell
24 you to look for pentobarbital API?

25 A. No.

1 Q. When you get a request from a customer
2 for a certain drug, how do you determine whether you'll
3 compound the drug or look for a commercially
4 manufactured version?

5 MR. MITCHELL: Object to the form.

6 THE WITNESS: Depending on how -- what
7 the order from the doctor is.

8 BY MS. NELSON-MAJOR:

9 Q. Can you explain that to me?

10 A. It's a medication written on the order.
11 Sorry, I'm trying to see how to word it.

12 If it's something commonly used that I'm
13 aware is already commercially available and it's a tablet
14 or capsule or solution, whatever it may be, then we don't
15 look into compounding the medication itself. We just
16 purchase whatever is commercially available.

17 Q. So if you get a request for a drug that
18 you can't find in a commercially available version,
19 what do you generally do next?

20 MR. MITCHELL: Form.

21 THE WITNESS: See if it is available as
22 an API that we could make.

23 BY MS. NELSON-MAJOR:

24 Q. When searching -- when you received the
25 request from TDOC for midazolam, what did you do to

1 ascertain whether that was available?

2 MR. MITCHELL: Object to the form, but
3 you can answer.

4 THE WITNESS: It is available as a
5 commercially manufactured product.

6 BY MS. NELSON-MAJOR:

7 Q. If it's available as a commercially
8 manufactured product, why are you compounding it for
9 TDOC?

10 MR. MITCHELL: Same objection. You can
11 answer.

12 THE WITNESS: The strength that we were
13 asked to procure is not available, so we made it
14 in a compound instead of the commercially
15 available product.

16 BY MS. NELSON-MAJOR:

17 Q. And how did you figure out that that
18 midazolam API was available for you to compound for
19 TDOC?

20 A. It's available from the wholesalers that
21 we order from.

22 Q. Did you consult any of the three
23 databases you had talked about earlier when figuring
24 out whether that midazolam was available?

25 A. Yes.

1 Q. And I'm specifically asking about
2 midazolam in API form. I'm sorry.

3 A. Yes.

4 Q. Was it the same database that you looked
5 at when determining whether pentobarbital was available
6 for TDOC?

7 A. No.

8 Q. It was one of the other two databases?

9 A. Yes.

10 Q. And what about for the potassium chloride
11 that you compound for TDOC? What did you do to
12 determine whether that was commercially available?

13 MR. MITCHELL: Object to the form.

14 THE WITNESS: Searched that same database
15 as the pentobarbital.

16 BY MS. NELSON-MAJOR:

17 Q. And was the potassium chloride available
18 in a commercially manufactured form for TDOC?

19 A. Not in the strength they were
20 requiring -- requesting.

21 Q. And what did you do to determine that the
22 potassium chloride API was then available for you to
23 compound for TDOC?

24 MR. MITCHELL: Object to the form. You
25 may answer.

1 THE WITNESS: Searched the same database
2 that I used to search for the midazolam.

3 BY MS. NELSON-MAJOR:

4 Q. Before the pharmacy owner left the
5 pharmacy, did you have conversations with the pharmacy
6 owner about any efforts he might have made to look at
7 -- look for pentobarbital for TDOC?

8 A. No.

9 Q. Are you still in contact with the
10 pharmacy owner?

11 A. The past pharmacy owner?

12 Q. That's right.

13 A. No.

14 Q. If you know, why did the pharmacy --
15 former pharmacy owner leave your pharmacy?

16 MR. MITCHELL: I'm going to object,
17 pursuant to the protective order. Pharmacist, to
18 the extent you can answer without identifying, you
19 can answer.

20 THE WITNESS: I don't know specific
21 reasons.

22 BY MS. NELSON-MAJOR:

23 Q. Now, I have a couple more questions about
24 these three databases. So when you first get an order
25 for a particular drug, what is the first database you

1 search for availability?

2 MR. MITCHELL: Objection, pursuant to the
3 protective order. Do not answer that.

4 BY MS. NELSON-MAJOR:

5 Q. I'm not asking for the name of the
6 database. As you've described them to me, there's one
7 database that you searched for pentobarbital; and then
8 there are two additional databases that you searched
9 for for the midazolam and potassium chloride API. Is
10 that right?

11 A. Yes.

12 Q. And the second and third database, is
13 that strictly API or does that also have commercially
14 manufactured drugs in it?

15 A. Just API.

16 Q. And you did not search those second and
17 third databases for the pentobarbital API?

18 A. No.

19 Q. Could you please pull up Exhibit 13.

20 A. Okay. I have it.

21 Q. It's an email chain from July 20th, 2017.
22 Did you write or receive any of these emails?

23 A. No.

24 Q. There's a large redaction in the middle
25 of the page, and then above that there's a -- it says

1 "regards." But the -- the next two lines above that,
2 it says: "I have some news on the pento. It's not
3 good. I had the DEA invite me over to discuss it."

4 Do you know what this email is referring
5 to?

6 A. No.

7 Q. Did anyone at your pharmacy ever discuss
8 with you a meeting they had with the DEA about the
9 TDOC's request for lethal injection chemicals?

10 A. No.

11 Q. Have you ever had any conversations with
12 the DEA about providing drugs to be used in lethal
13 injection?

14 A. No.

15 Q. Can you pull up Exhibit 15, please.

16 A. Okay. I have it.

17 Q. This is an email chain from April 4th,
18 2017. Did you write or receive any of these emails?

19 A. No.

20 Q. Have you ever been involved in the
21 manufacturing of pentobarbital API by a synthetic
22 route?

23 A. No.

24 Q. Does your pharmacy ever manufacture API
25 by the synthetic route?

1 A. I'm sorry, can you say that again?

2 Q. Does your pharmacy ever manufacture API
3 itself via the synthetic route?

4 A. No, we do not manufacture API.

5 Q. Can you please look at Exhibit 17.

6 A. Okay. I have it.

7 Q. And related to that last answer that you
8 gave, is your pharmacy capable of manufacturing API via
9 the synthetic route?

10 A. No.

11 Q. What sorts of facilities are required to
12 manufacture API?

13 MR. MITCHELL: Objection.

14 THE WITNESS: I'm not aware of what they
15 have to do to be able to manufacture APIs.

16 BY MS. NELSON-MAJOR:

17 Q. Turning back to Exhibit 17, it's an email
18 chain from October 30th, 2019.

19 A. Yes, I see it.

20 Q. Did you write or receive any of these
21 emails?

22 A. I did not.

23 Q. And you earlier said that the former
24 pharmacy owner left in December of 2019; is that right?

25 A. Yes.

1 Q. And you said you weren't aware of the
2 details of that pharmacy owner's departure. Are you
3 aware generally of the reasons that the pharmacy owner
4 left the pharmacy?

5 MR. MITCHELL: Objection.

6 BY MS. NELSON-MAJOR:

7 Q. You can answer, Pharmacist.

8 A. There was -- so he was majority owner --

9 MR. MITCHELL: Pharmacist, maybe -- I'm
10 going to object, pursuant to the protective order,
11 depending on what your answer is going to be.

12 I'm going to object, pursuant to the
13 protective order, and instruct you not to answer
14 anything beyond a "Yes" or "No."

15 BY MS. NELSON-MAJOR:

16 Q. Did the pharmacy owner retire?

17 A. No.

18 Q. Was the pharmacy owner a licensed
19 pharmacist?

20 A. No.

21 Q. Was the pharmacy -- was the pharmacy
22 owner's departure at all related to the provision of
23 lethal injection drugs to TDOC?

24 MR. MITCHELL: Object to the form. You
25 can answer, if you know.

1 THE WITNESS: Not that I'm aware of.

2 BY MS. NELSON-MAJOR:

3 Q. Did the pharmacy owner get in some sort
4 of trouble?

5 MR. MITCHELL: Object to that form.

6 THE WITNESS: No.

7 BY MS. NELSON-MAJOR:

8 Q. Can you state your answer again,
9 Pharmacist?

10 A. No.

11 Q. Before the pharmacy owner left, did the
12 pharmacy owner share with you any of the correspondence
13 he had previously had with the drug procurer?

14 A. No.

15 Q. Can you please take a look at Exhibit 19.

16 A. Okay, I have it.

17 Q. Do you see that this is a memo dated May
18 3rd, 2019, and it's titled "Whether the Food and Drug
19 Administration has Jurisdiction over Articles Intended
20 for Use in Lawful Executions?"

21 A. Yes, I see it.

22 Q. Have you seen this memo before?

23 A. No, I have not.

24 Q. Are you aware that the Attorney General
25 has instructed the FDA to not exercise jurisdiction

1 over importation of lethal injection drugs?

2 MR. MITCHELL: I'm going to object to the
3 form. And could you specify what Attorney
4 General?

5 BY MS. NELSON-MAJOR:

6 Q. The United States Attorney General, not
7 Mr. Mitchell.

8 A. No.

9 Q. Did anyone ever ask you to research legal
10 issues related to the -- to obtaining pentobarbital on
11 behalf of TDOC?

12 A. No.

13 Q. What about obtaining pentobarbital API?

14 A. No.

15 Q. Do you currently have pentobarbital API
16 in stock at your facility?

17 A. No.

18 Q. Have you ever filled a prescription for
19 pentobarbital in the course of your duties as a
20 pharmacist?

21 A. No.

22 Q. If you had pentobarbital API in stock,
23 would you be able to compound it for TDOC for use in
24 executions?

25 MR. MITCHELL: Object to the form.

1 THE WITNESS: Yes.

2 MS. NELSON-MAJOR: Just a moment, please.

3 (Pause.)

4 BY MS. NELSON-MAJOR:

5 Q. Could you please pull up Exhibit 1.

6 A. Okay. I have it.

7 Q. Have you seen this document before?

8 A. I'm just looking through it.

9 Q. Please take your time.

10 (Pause.)

11 THE WITNESS: Yes.

12 BY MS. NELSON-MAJOR:

13 Q. This is titled "Lethal Injection
14 Execution Manual, Execution Procedures for Lethal
15 Injection."

16 Have you ever seen this document before?

17 A. Not to the entirety --

18 Q. And when you say --

19 A. -- but I've seen some documents in here.

20 Q. I'm so sorry to interrupt you.

21 So you -- you haven't seen this entire
22 document before?

23 A. No.

24 Q. What portions of the document have you
25 seen before?

1 A. Sorry, I just left a page. Just a
2 moment.

3 Q. Of course. Take your time.
4 (Pause.)

5 THE WITNESS: The portion where it says
6 "Lethal Injection Chemical Setup and Preparation."
7 BY MS. NELSON-MAJOR:

8 Q. And what page are you on, Pharmacist?

9 A. On Page 40. Oh, I'm sorry, 39.

10 Q. Is this the only portion of this document
11 that you've seen before?

12 A. Through Page 40 -- 39 and 40.

13 Q. Page -- Page 39 and 40 are the only pages
14 of this document that you've seen before?

15 A. I'm just looking further. If you want, I
16 can keep going.

17 Q. Sure. Take your time, please.
18 (Pause.)

19 THE WITNESS: And I believe Page 94 is
20 the -- I don't remember the exhibit you showed me
21 earlier. It looks the same.

22 Other than that, that would be all.

23 BY MS. NELSON-MAJOR:

24 Q. And what is your understanding of what
25 this document is?

1 A. It just looks like a manual for the
2 execution process.

3 Q. And the pages that you've seen before,
4 Page 39 to 40, when was the first time that you saw
5 those pages?

6 A. I don't recall the exact time, but it
7 would have been at the end of 2018 -- or when I started
8 in 2018.

9 Q. And who showed you or provided you with
10 pages 39 and 40?

11 MR. MITCHELL: Object, pursuant to the
12 protective order. If you can name a person by a
13 role, then I'll permit you to answer; but
14 otherwise, I won't.

15 THE WITNESS: Previous owner.

16 BY MS. NELSON-MAJOR:

17 Q. And the previous owner, how did he
18 provide you with pages 39 and 40?

19 A. You mean like in what route? Like if it
20 was printed, or --

21 Q. Did he give you copies, or did he just
22 generally tell you about what was in them? How did you
23 become familiar with those pages?

24 A. He emailed them to me and asked me to
25 review them.

1 Q. Review them for what purpose?

2 A. Just to read through, make sure it made
3 sense, the steps.

4 Q. Did he ask you to make any edits to those
5 pages?

6 A. Yes.

7 Q. Did you make edits to those pages?

8 A. Yes. I do remember editing, but I don't
9 remember what.

10 Q. Are you aware of who drafted pages 39 to
11 40?

12 A. No.

13 MR. MITCHELL: Form. Go ahead.

14 BY MS. NELSON-MAJOR:

15 Q. And did you provide those edits to the
16 pharmacy owner over email?

17 A. Yes.

18 Q. Did you make edits just that one time?

19 A. It may have been twice; one or two times,
20 no more than that.

21 Q. I know you said you don't recall exactly
22 what edits you made, but do you remember what topics or
23 issues you addressed in those edits?

24 A. I can read through a little and see if
25 something reminds me of anything.

1 Q. Okay. That'd be great. Thank you.

2 (Pause.)

3 THE WITNESS: I'm sorry, I don't
4 remember.

5 BY MS. NELSON-MAJOR:

6 Q. Do you remember making any -- any edits
7 to the concentration of the drugs listed on these
8 pages?

9 MR. MITCHELL: Object to the form.

10 THE WITNESS: No, I don't.

11 BY MS. NELSON-MAJOR:

12 Q. What about the overall doses of each drug
13 listed?

14 MR. MITCHELL: Same objection.

15 THE WITNESS: No.

16 BY MS. NELSON-MAJOR:

17 Q. And when you sent those edits to the
18 pharmacy owner, was anyone else involved in that email
19 chain?

20 A. Not that I recall.

21 Q. Did you discuss your proposed edits with
22 anyone other than the pharmacy owner?

23 A. No.

24 MS. NELSON-MAJOR: We'll request in
25 discovery all the correspondence related to the

1 edits that the pharmacy made -- Pharmacist made,
2 as well as any of the actual documents that he
3 made edits on.

4 MR. MITCHELL: We'll look at that.

5 MS. NELSON-MAJOR: Okay.

6 BY MS. NELSON-MAJOR:

7 Q. And you said you first saw this document
8 in 2018. Do you know how long this current protocol
9 has been in place for?

10 A. No.

11 Q. Were you asked for input outside of the
12 edits you made to Page 39 and 40?

13 A. No.

14 Q. Did you have any conversations with the
15 pharmacy owner about Page 39 and 40, outside of the
16 edits that you made?

17 A. No.

18 MR. MITCHELL: Object to form.

19 BY MS. NELSON-MAJOR:

20 Q. Did you have any conversations with the
21 pharmacy owner about the protocol, more generally?

22 MR. MITCHELL: Same objection.

23 THE WITNESS: No.

24 BY MS. NELSON-MAJOR:

25 Q. What about with anyone else at your

1 pharmacy?

2 MR. MITCHELL: Same objection.

3 THE WITNESS: No.

4 BY MS. NELSON-MAJOR:

5 Q. Did you provide copies of these
6 instructions, Page 39 and 40, to anyone else at your
7 pharmacy?

8 A. No.

9 Q. In making those edits, did you consult
10 any documents outside of the Page 39 and 40?

11 A. No.

12 Q. If you know, do you know whether any
13 other professionals besides yourself were consulted in
14 the creation of this protocol?

15 A. Do not know.

16 Q. What drugs does the current protocol
17 contemplate TDOC using in executions?

18 A. I'm aware of the midazolam, the
19 vecuronium bromide, and potassium chloride.

20 Q. What is your understanding of the purpose
21 of using the midazolam in the lethal injection
22 protocol?

23 MR. MITCHELL: Object to the form. You
24 can answer.

25 THE WITNESS: And my understanding of

1 just what -- how the medication works itself would
2 be to help with sedation.

3 BY MS. NELSON-MAJOR:

4 Q. You said that's your ordinary
5 understanding of midazolam. What kind of drug is
6 midazolam?

7 MR. MITCHELL: Object to the form.

8 THE WITNESS: A benzodiazepine.

9 BY MS. NELSON-MAJOR:

10 Q. And what DEA Schedule is it?

11 A. Sorry, I don't recall off the top of my
12 head if it's Schedule III or IV.

13 Q. You said either Schedule III or IV; is
14 that right?

15 A. Yes, ma'am.

16 Q. Can you tell me a little bit more about
17 the ordinary uses of midazolam that you mentioned?

18 MR. MITCHELL: Object to form. You can
19 answer.

20 THE WITNESS: Apart from sedation, I
21 haven't seen it used in any other form.

22 BY MS. NELSON-MAJOR:

23 Q. Can you explain to me what you mean by
24 "sedation?"

25 MR. MITCHELL: Pharmacist, you can

1 answer.

2 THE WITNESS: Okay. Just putting whoever
3 the intended person is into like a sleeping state.

4 BY MS. NELSON-MAJOR:

5 Q. Is a sleeping state the same thing as
6 anesthesia?

7 MR. MITCHELL: Object to the form.

8 THE WITNESS: Yes. It can be used in
9 anesthesia, as well.

10 BY MS. NELSON-MAJOR:

11 Q. Are you aware of what types of procedures
12 that midazolam is used in?

13 A. No, I'm not.

14 Q. Is midazolam FDA approved as the sole
15 drug to produce and maintain anesthesia during a
16 painful surgical procedure?

17 MR. MITCHELL: Object to the form. You
18 can answer.

19 THE WITNESS: I'm not aware that it's the
20 sole drug approved, no.

21 BY MS. NELSON-MAJOR:

22 Q. When you say you're unaware, does that
23 mean it is your understanding that it is not FDA
24 approved for that purpose?

25 MR. MITCHELL: Same objection.

1 THE WITNESS: That's not what I mean. I
2 know it's approved by the FDA for sedation, but
3 that's not its sole purpose. But I'm not aware of
4 the other FDA-approved indications.

5 BY MS. NELSON-MAJOR:

6 Q. I might have misspoke. Let me try to ask
7 the question again, because I wasn't asking about its
8 sole purpose.

9 I'm asking whether it's been FDA approved
10 as the sole drug, meaning the only drug, to be used to
11 induce anesthesia during people's surgical procedures?

12 MR. MITCHELL: Form objection.

13 THE WITNESS: I can answer?

14 BY MS. NELSON-MAJOR:

15 Q. Yes.

16 A. No, it's not the only FDA-approved drug.

17 Q. Has it been FDA approved to be used
18 alone, not coupled with another drug, to produce and
19 maintain anesthesia during a painful surgical
20 procedure?

21 MR. MITCHELL: Same objection. You can
22 answer.

23 THE WITNESS: I -- I do not know.

24 BY MS. NELSON-MAJOR:

25 Q. Does midazolam have an analgesic effect?

1 MR. MITCHELL: Form objection. You can
2 answer.

3 THE WITNESS: I believe, yes, it does
4 have an analgesic effect.

5 BY MS. NELSON-MAJOR:

6 Q. Are you aware that midazolam has a
7 ceiling effect?

8 MR. MITCHELL: Same objection. You can
9 answer.

10 THE WITNESS: No.

11 BY MS. NELSON-MAJOR:

12 Q. Do you know whether midazolam can produce
13 a level of surgical anesthesia?

14 A. Yes.

15 Q. Yes, it does produce a surgical level of
16 anesthesia?

17 A. Depending on the surgery, yes.

18 Q. What sorts of surgeries can midazolam
19 produce a surgical level of anesthesia?

20 MR. MITCHELL: Object to the form.

21 THE WITNESS: I would say minor, but I
22 can't tell you what the definition of "minor
23 surgery" is.

24 BY MS. NELSON-MAJOR:

25 Q. Are you aware that there are different

1 levels of anesthetic depth?

2 A. Yes.

3 Q. And what is your understanding of those
4 different levels?

5 MR. MITCHELL: Object to the form. You
6 can answer.

7 THE WITNESS: I don't have a deep
8 knowledge basis on different levels of anesthesia.

9 BY MS. NELSON-MAJOR:

10 Q. Are you aware that midazolam cannot
11 produce general anesthesia?

12 MR. MITCHELL: Object to the form. You
13 can answer.

14 THE WITNESS: Yes.

15 BY MS. NELSON-MAJOR:

16 Q. Are you aware that midazolam can result
17 in a paradoxical reaction?

18 MR. MITCHELL: Same objection. You can
19 answer.

20 THE WITNESS: Yes.

21 BY MS. NELSON-MAJOR:

22 Q. Can you describe to me what a paradoxical
23 reaction is?

24 MR. MITCHELL: Same objection. You can
25 answer.

1 THE WITNESS: Just a movement, maybe
2 unintended. They won't know, because they're
3 under anesthesia.

4 BY MS. NELSON-MAJOR:

5 Q. Do you know what the deepest level of
6 anesthesia is that midazolam is capable of producing?

7 A. No.

8 MR. MITCHELL: Same objection. You can
9 answer.

10 BY MS. NELSON-MAJOR:

11 Q. Is midazolam acidic or alkaline?

12 MR. MITCHELL: Same objection. You can
13 answer.

14 THE WITNESS: Sorry, I'm trying to
15 recall. I don't remember.

16 BY MS. NELSON-MAJOR:

17 Q. What kind of drug is vecuronium bromide?

18 MR. MITCHELL: Object to form. You can
19 answer.

20 THE WITNESS: A neuromuscular blocker.

21 BY MS. NELSON-MAJOR:

22 Q. And can you explain to me what a
23 neuromuscular blocker is?

24 MR. MITCHELL: Same objection.

25 THE WITNESS: Medication used so that

1 when under surgery the....

2 BY MS. NELSON-MAJOR:

3 Q. Pharmacist, I didn't catch the last bit
4 of your answer. Can you repeat it?

5 A. No, I'm sorry. I'm just trying to word
6 it the right way for you.

7 Medication used to help stop, when under
8 anesthesia, any movement.

9 Q. What is your understanding of the purpose
10 of using the vecuronium bromide in the lethal injection
11 protocol?

12 MR. MITCHELL: Object to form, but you
13 can answer.

14 THE WITNESS: My understanding is that
15 it's used for what we were discussing, as a
16 neuromuscular blocker.

17 BY MS. NELSON-MAJOR:

18 Q. To block the inmates from moving?

19 A. Yes, ma'am.

20 Q. Do you know what dosage the correct
21 protocol contemplates?

22 A. No, ma'am; I don't remember.

23 Q. What kind of drug is potassium chloride?

24 A. It's -- sorry. I mean, it -- it replaces
25 potassium.

1 Q. Is potassium chloride acidic or alkaline?

2 MR. MITCHELL: Form, but you can answer.

3 THE WITNESS: I don't know.

4 BY MS. NELSON-MAJOR:

5 Q. What is your understanding of the purpose
6 of including the potassium chloride in the lethal
7 injection protocol?

8 MR. MITCHELL: Same objection. You can
9 answer.

10 BY MS. NELSON-MAJOR:

11 Q. You can answer, Pharmacist.

12 A. Okay. The potassium chloride is used as
13 an elevated dose normal for the human body, and it
14 increases heart rate, heart rhythm.

15 Q. What is the goal of administering that
16 dose, in your understanding, in this current protocol?

17 MR. MITCHELL: Form objection. You can
18 answer.

19 THE WITNESS: That's what would lead to
20 the lethal part of the procedure.

21 BY MS. NELSON-MAJOR:

22 Q. Is vecuronium bromide acidic or alkaline?

23 A. I do not know.

24 MR. MITCHELL: Form objection.

25 BY MS. NELSON-MAJOR:

1 Q. In your opinion, how deep of sedation
2 will 500 milligrams of midazolam produce in inmates?

3 MR. MITCHELL: Form objection. You can
4 answer.

5 THE WITNESS: I do not know.

6 BY MS. NELSON-MAJOR:

7 Q. Do you believe that inmates will be under
8 general anesthesia when injected with 500 milligrams of
9 midazolam?

10 MR. MITCHELL: Same objection. You can
11 answer.

12 THE WITNESS: Yes.

13 BY MS. NELSON-MAJOR:

14 Q. On what do you base that opinion?

15 A. That it's been used before.

16 Q. When you say "used before," do you mean
17 in executions?

18 A. Yes, just the purpose of this document.

19 Q. Have you ever observed an execution?

20 A. No.

21 Q. Have you ever reviewed records related to
22 a particular execution?

23 A. No.

24 Q. And when you say that you based this
25 conclusion on the fact that it's included in the

1 protocol, can you explain that to me?

2 MR. MITCHELL: Same objection. Well,
3 form objection. You can answer.

4 THE WITNESS: That the protocol includes
5 the doses of what is necessary to carry out the
6 execution.

7 BY MS. NELSON-MAJOR:

8 Q. So you're basing your conclusion that
9 general anesthesia will be achieved on the fact that
10 it's in the protocol?

11 A. No.

12 Q. Are you basing it on -- no?

13 MR. MITCHELL: Form objection. You can
14 answer.

15 THE WITNESS: No.

16 BY MS. NELSON-MAJOR:

17 Q. Was that "No?" Sorry, I couldn't quite
18 catch it.

19 A. No.

20 Q. Could you pull up Exhibit 7, please.

21 MR. MITCHELL: Was that 17, Hayden?

22 MS. NELSON-MAJOR: 7, sorry.

23 MR. MITCHELL: Okay.

24 THE WITNESS: I have it.

25 BY MS. NELSON-MAJOR:

1 Q. Okay. Have you seen this email before?

2 A. No.

3 Q. Can you turn to the second page?

4 A. Okay. I have it.

5 Q. Okay. And at the bottom of the page
6 there's the text of an email, and I want to ask you
7 about that text. It states:

8 "I reviewed several protocols from states
9 that currently use that method. Most have
10 a three-drug protocol including a paralytic
11 and potassium chloride. Here is my concern
12 with midazolam. Being a benzodiazepine, it
13 doesn't elicit strong analgesic effects.
14 The subjects may be able to feel pain from
15 the administration of the second and third
16 drugs, potassium chloride especially."

17 Do you --

18 A. Yes, I see it.

19 Q. Do you share those concerns about
20 midazolam?

21 MR. MITCHELL: Object to the form. You
22 can answer.

23 THE WITNESS: Yes. I know midazolam, as
24 we stated, does have analgesic effects. But to
25 the degree, with what this is saying, the

1 potassium chloride and the pain; yes, I would
2 agree with this statement.

3 BY MS. NELSON-MAJOR:

4 Q. Do you also share the concern that
5 potassium chloride in particular may cause the inmate
6 to cause -- to experience pain?

7 MR. MITCHELL: Form objection. You can
8 answer.

9 THE WITNESS: Yes.

10 BY MS. NELSON-MAJOR:

11 Q. Can you explain that to me?

12 MR. MITCHELL: Same objection.

13 THE WITNESS: Without knowing the level
14 of the midazolam and how much analgesic effect is
15 occurring, even though the vecuronium is used --
16 being used as a paralytic agent, it would be -- we
17 wouldn't -- it would be unable to be -- to know
18 what level of pain the potassium chloride is
19 causing.

20 BY MS. NELSON-MAJOR:

21 Q. What sort of pain would the potassium
22 chloride cause?

23 MR. MITCHELL: Same objection. You can
24 answer.

25 THE WITNESS: I don't know how to explain

1 that.

2 BY MS. NELSON-MAJOR:

3 Q. If a person is in a surgical plane of
4 anesthesia, are they able to feel pain?

5 MR. MITCHELL: Same objection. You can
6 answer.

7 THE WITNESS: I'm sorry, can you say that
8 again?

9 BY MS. NELSON-MAJOR:

10 Q. If a person is in a surgical plane of
11 anesthesia, are they able to feel pain?

12 MR. MITCHELL: Same objection. You can
13 answer.

14 THE WITNESS: They should not.

15 BY MS. NELSON-MAJOR:

16 Q. What about a general level of anesthesia?
17 Should they be able to feel pain?

18 MR. MITCHELL: Same objection.

19 THE WITNESS: They should not.

20 BY MS. NELSON-MAJOR:

21 Q. What about potassium chloride as a
22 chemical compound causes the risk of pain?

23 MR. MITCHELL: Same objection. You can
24 answer.

25 (Pause.)

1 BY MS. NELSON-MAJOR:

2 Q. You can answer, Pharmacist.

3 A. Okay. I'm not aware of what the pain
4 would feel like. Since it's causing like a cardiac
5 arrest, I'm not -- I'm not aware of what pain, apart
6 from that.

7 Q. Did you share your concerns about these
8 -- midazolam with anyone?

9 MR. MITCHELL: Object to form. You can
10 answer.

11 THE WITNESS: No.

12 BY MS. NELSON-MAJOR:

13 Q. Why not?

14 MR. MITCHELL: Same objection.

15 THE WITNESS: I assumed, when my role
16 started, that it was a protocol that had been in
17 use and in effect and termed to be suitable.

18 BY MS. NELSON-MAJOR:

19 Q. In the normal course of your duties, do
20 you ever contact a customer about the appropriateness
21 of a drug that's been prescribed?

22 MR. MITCHELL: Object to the form. You
23 can answer.

24 THE WITNESS: Yes, that's in my normal
25 job course.

1 BY MS. NELSON-MAJOR:

2 Q. And what sorts of issues with a potential
3 prescription would cause you to reach out to a customer
4 to discuss your concerns?

5 MR. MITCHELL: Object to the form. You
6 can answer.

7 THE WITNESS: If it interacts with other
8 medications that they're taking.

9 BY MS. NELSON-MAJOR:

10 Q. Is ketamine an analgesic?

11 MR. MITCHELL: Object to the form. You
12 can answer.

13 THE WITNESS: Yes.

14 BY MS. NELSON-MAJOR:

15 Q. What dose of midazolam is administered
16 pursuant to the protocol?

17 MR. MITCHELL: Object to the form. You
18 can answer.

19 THE WITNESS: I'm trying to remember.
20 Just give me a moment.

21 BY MS. NELSON-MAJOR:

22 Q. Of course.

23 A. I believe it's 500 milligrams.

24 Q. Is that a clinical dose?

25 MR. MITCHELL: Object to the form. You

1 can answer.

2 THE WITNESS: I don't remember the dosage
3 range for midazolam.

4 BY MS. NELSON-MAJOR:

5 Q. Is 500 milligrams of midazolam sufficient
6 to induce surgical anesthesia?

7 MR. MITCHELL: Form. You can answer.

8 BY MS. NELSON-MAJOR:

9 Q. You can answer. I can restate the
10 question.

11 A. Okay. Go ahead.

12 Q. Is 500 milligrams of midazolam sufficient
13 to induce general anesthesia?

14 MR. MITCHELL: Same objection. You can
15 answer.

16 THE WITNESS: I believe it is, yes.

17 BY MS. NELSON-MAJOR:

18 Q. And when someone is under general
19 anesthesia, are they able to feel pain?

20 MR. MITCHELL: Same objection.

21 THE WITNESS: It's my understanding that
22 they are not.

23 BY MS. NELSON-MAJOR:

24 Q. And you just discussed your concerns that
25 an inmate might feel pain following the administration

1 of the midazolam under the protocol; is that right?

2 A. Yes.

3 MR. MITCHELL: Same objection.

4 THE WITNESS: Yes.

5 BY MS. NELSON-MAJOR:

6 Q. Yes? Is that because they're not under
7 general anesthesia?

8 MR. MITCHELL: Same objection.

9 THE WITNESS: No, I'm not saying it
10 because of that.

11 BY MS. NELSON-MAJOR:

12 Q. Well, can you explain that to me, how
13 500 --

14 A. Because --

15 Q. I'm sorry, go ahead.

16 MR. MITCHELL: Form objection. You can
17 answer, though, Pharmacist.

18 THE WITNESS: Okay. It's just not 100
19 percent in anything, even if someone is under
20 anesthesia, that they're able to feel pain or not.
21 It's just our understanding that they don't, but
22 not necessarily 100-percent certainty.

23 BY MS. NELSON-MAJOR:

24 Q. So you previously testified that
25 midazolam can't cause general anesthesia; is that

1 right?

2 MR. MITCHELL: Object to the form.

3 THE WITNESS: I believe we were talking
4 about for what level of anesthesia.

5 BY MS. NELSON-MAJOR:

6 Q. Now I'm asking about general anesthesia.

7 MR. MITCHELL: Same objection. Is it --
8 is that --

9 THE WITNESS: Not used alone as a primary
10 drug. That's what we discussed, yes.

11 BY MS. NELSON-MAJOR:

12 Q. And that's your opinion for midazolam at
13 any dosage, right?

14 MR. MITCHELL: Same objection.

15 THE WITNESS: Yes. So it would be the
16 same for whatever dose you're using.

17 MS. NELSON-MAJOR: Just a second.

18 (Pause.)

19 BY MS. NELSON-MAJOR:

20 Q. Have you ever been to the Riverbend
21 Maximum Security Institution?

22 A. No.

23 Q. So you've never seen the drugs that you
24 provide TDOC being prepared for use in an execution?

25 MR. MITCHELL: Object to form.

1 THE WITNESS: No.

2 BY MS. NELSON-MAJOR:

3 Q. You've never attended an execution?

4 A. I have not.

5 Q. Have you ever provided training to anyone
6 else in connection with executions?

7 MR. MITCHELL: Object to form.

8 THE WITNESS: No.

9 BY MS. NELSON-MAJOR:

10 Q. I want to return to a question I just
11 asked you about whether any dose of midazolam is
12 sufficient to maintain general anesthesia -- or excuse
13 me, to cause general anesthesia.

14 Would 20 milligrams be sufficient?

15 MR. MITCHELL: Object to the form.

16 BY MS. NELSON-MAJOR:

17 Q. You can answer.

18 A. I don't remember the lowest dose
19 recommendations or the highest dose recommendations for
20 anesthesia for the midazolam.

21 Q. But it's your opinion that no dose would
22 be sufficient to maintain general anesthesia?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: Correct.

25 BY MS. NELSON-MAJOR:

1 Q. What does the term "commercially
2 manufactured drug" mean?

3 MR. MITCHELL: Object to the form. You
4 can answer.

5 THE WITNESS: It's a medication made by a
6 manufacturer that pharmacies can purchase to sell
7 to patients.

8 BY MS. NELSON-MAJOR:

9 Q. And what does the term "compounded drugs"
10 mean?

11 A. Medications where pharmacies purchase
12 APIs to change the chemical component into capsule or
13 solution, or whatever it can be made into, to dispense
14 as a prescription to patients.

15 Q. Are compounded drugs FDA approved?

16 MR. MITCHELL: Object to the form.

17 BY MS. NELSON-MAJOR:

18 Q. You can answer.

19 A. They're approved. The pharmacy is
20 still -- has to follow FDA guidelines, and the
21 medications themselves have to be of intended uses.
22 And the medications themselves have to be approved
23 already, just as medications themselves.

24 Q. When you say the medication needs to be
25 approved already, are you talking about the

1 commercially manufactured version of the drug needs to
2 be approved already by the FDA?

3 A. Just the AP -- API itself, which may be
4 related to another -- another -- what was the term you
5 used? Not the -- the commercially available product.

6 Q. So is the API FDA approved or needs to be
7 FDA approved?

8 MR. MITCHELL: Object to the form.

9 THE WITNESS: The API has to be FDA
10 approved, and it has to -- yes, yes.

11 BY MS. NELSON-MAJOR:

12 Q. Are there different risks associated with
13 compounded drugs than commercially manufactured drugs?

14 MR. MITCHELL: Same objection.

15 THE WITNESS: I'd say the risks are the
16 same.

17 BY MS. NELSON-MAJOR:

18 Q. And what are those risks?

19 MR. MITCHELL: Same objection.

20 THE WITNESS: The sterility of the
21 medication. The dosing of the medication that was
22 prepared in the correct facility that follows
23 guidelines.

24 BY MS. NELSON-MAJOR:

25 Q. Are there any risks specific to the

1 compounding process?

2 MR. MITCHELL: Object to the form. You
3 can answer.

4 THE WITNESS: Yes.

5 BY MS. NELSON-MAJOR:

6 Q. What are those risks?

7 MR. MITCHELL: Same objection.

8 THE WITNESS: The integrity of the room
9 that you're making the compound to not introduce
10 -- or to keep and maintain sterility of the
11 medication.

12 That you, yourself, as the compounder are
13 properly gowned and garbed.

14 BY MS. NELSON-MAJOR:

15 Q. What does the term "active pharmaceutical
16 ingredient" mean?

17 A. That's what you've been referring to as
18 API. So it's the ingredient that when you're
19 compounding is the main ingredient that -- that is
20 the -- what the prescription is written for. That's
21 for whatever the intended purpose is.

22 Q. If it's available, is your first choice
23 to fill a prescription with a commercially manufactured
24 version of a drug or a compounded version?

25 MR. MITCHELL: Form.

1 THE WITNESS: Manufactured.

2 BY MS. NELSON-MAJOR:

3 Q. Why?

4 MR. MITCHELL: Same objection.

5 THE WITNESS: Based on the guidelines.

6 BY MS. NELSON-MAJOR:

7 Q. What guidelines?

8 A. Of the state statutes and the USP.

9 Q. And can you tell us what "USP" means?

10 A. United States Pharmacopoeia.

11 Q. Do the United States Pharmacopoeia
12 standards express a preference for commercially
13 manufactured drugs?

14 MR. MITCHELL: Form. You can answer.

15 THE WITNESS: It's a precedent to use the
16 manufactured drugs; and then the USP is the
17 guidelines for in case it has to be compounded, or
18 needs to be.

19 BY MS. NELSON-MAJOR:

20 Q. And do you know the reason why
21 commercially manufactured drugs are the first choice?

22 MR. MITCHELL: Same objection.

23 THE WITNESS: I don't know the actual
24 listed reason, no.

25 BY MS. NELSON-MAJOR:

1 Q. In the practice of pharmacy, why would
2 you choose to fill an order with a commercially
3 manufactured version before relying on a compounded
4 version?

5 A. Just the time, and that I already know
6 that it has done the tests -- or it should have already
7 had the testing to be released to the patients.

8 Q. Under what circumstances do you compound
9 drugs?

10 A. If something's not available as a
11 commercially prepared medication, or if it is available
12 but maybe is on backorder.

13 Q. I want to ask you a couple of questions
14 about how you fill TDOC's orders for lethal injection
15 drugs.

16 Does TDOC place a separate order for API?

17 MR. MITCHELL: Object to the form.

18 THE WITNESS: No.

19 BY MS. NELSON-MAJOR:

20 Q. So TDOC does not purchase API from you?

21 MR. MITCHELL: Same objection.

22 THE WITNESS: No.

23 BY MS. NELSON-MAJOR:

24 Q. Are you aware of whether TDOC purchased
25 API through your pharmacy prior to your involvement?

1 A. I'm not aware.

2 Q. Do customers typically purchase API
3 through your pharmacy?

4 MR. MITCHELL: Same objection.

5 THE WITNESS: No.

6 BY MS. NELSON-MAJOR:

7 Q. Why not?

8 MR. MITCHELL: Object to the -- I'm going
9 to -- I'm going to object to the form, and I'm
10 also going to object pursuant to the protective
11 order.

12 If you think you can answer, Pharmacist,
13 I'll let you; otherwise, I'm going to instruct you
14 not. So let us know if you think you can answer
15 that without betraying your identity.

16 THE WITNESS: Yeah, I can answer.

17 MR. MITCHELL: Okay. You can do that,
18 then.

19 THE WITNESS: Can you restate your
20 question again?

21 MS. NELSON-MAJOR: I've now forgotten my
22 question, but let me see if I can.

23 BY MS. NELSON-MAJOR:

24 Q. Why -- so you testified that customers
25 typically don't purchase API through your pharmacy, and

1 then I asked you why not. I think that's where we
2 landed.

3 A. Okay. The API is not intended -- it's
4 just a bulk chemical of the medication that is supposed
5 to terminally be what they need. So they don't have
6 the training to -- to make whatever it is they need.

7 So that would be the reason why I would
8 make it first, and then they would get whatever the
9 prescription is for.

10 Q. And so when you receive a prescription
11 that requires you to compound a drug, would you order
12 just enough API to fulfill that prescription?

13 MR. MITCHELL: Object to the form. You
14 can answer.

15 THE WITNESS: No.

16 BY MS. NELSON-MAJOR:

17 Q. Explain your answer, please.

18 MR. MITCHELL: Objection.

19 THE WITNESS: If it's a prescription that
20 I know we're going to be making on a regular
21 basis, then I would purchase more so I don't have
22 to purchase it every time to make just one batch
23 of that for one patient.

24 BY MS. NELSON-MAJOR:

25 Q. Can you please pull up Exhibit 36.

1 A. Okay. I have it.

2 Q. Do you see that this is an invoice to
3 TDOC?

4 A. Yes.

5 Q. Do you recognize the form of this
6 invoice?

7 A. Yes.

8 Q. Is this an invoice from your pharmacy?

9 A. Yes.

10 Q. And do you see in the first line it says,
11 "Midazolam Bulk API in grams?"

12 A. Yes.

13 Q. And then under "QTY" -- I'm assuming
14 that's "quantity" -- it says "60?"

15 A. Yes.

16 Q. What do you understand this invoice to be
17 for?

18 A. Midazolam that we purchased to compound
19 orders we receive from TDOC.

20 Q. And how many grams of midazolam API did
21 you purchase in order to fill TDOC's orders?

22 MR. MITCHELL: Object to form.

23 THE WITNESS: I know I have records, but
24 I don't remember off the top of my head the exact
25 amount that we've purchased in total.

1 BY MS. NELSON-MAJOR:

2 Q. When it says "Quantity, 60," is that 60
3 grams or 60 units?

4 A. From my understanding, that would be 60
5 grams.

6 Q. So does this indicate that your pharmacy
7 purchased 60 grams of midazolam API for TDOC?

8 MR. MITCHELL: Form objection.

9 THE WITNESS: Yes, we purchased it for --
10 in purpose for TDOC.

11 BY MS. NELSON-MAJOR:

12 Q. And those 60 grams, would they only be
13 used to fill TDOC's orders?

14 A. Yes.

15 MR. MITCHELL: Same objection.

16 BY MS. NELSON-MAJOR:

17 Q. And how much did you charge TDOC for the
18 60 grams of midazolam?

19 A. It should be the amount that is on there
20 on the line total, the \$39,600.

21 Q. And how many executions could be
22 conducted with 60 grams of midazolam?

23 MR. MITCHELL: Form objection.

24 THE WITNESS: I'll have to do the math.

25 BY MS. NELSON-MAJOR:

1 Q. Do you recall how many milligrams the
2 execution protocol requires?

3 A. Yes. So the execution protocol was for
4 the 500 milligrams. Then we have to make extra to send
5 off for the testing that we have to do before it's
6 released, as well, so it's not necessarily just that
7 500 milligrams that we make each time.

8 Q. Do you know how many grams are consumed
9 by the testing you just referenced?

10 A. Let me think. Sorry, just a second.
11 I don't remember the exact number, but
12 it's probably between the 500 milligrams to a gram.

13 Q. Did you obtain the API to fill this
14 order?

15 MR. MITCHELL: Object to the form.

16 THE WITNESS: The exhibit that we were
17 looking at?

18 BY MS. NELSON-MAJOR:

19 Q. Yes.

20 A. Yes, ma'am.

21 Q. Did you buy it from a third party?

22 A. Yes.

23 Q. Do you know whether that API came from a
24 source outside of the United States?

25 A. No, it did not.

1 Q. What is the expiration date of the API?

2 A. I know I have it recorded, but I don't
3 recall off the top of my head.

4 Q. How do you record the expiration dates of
5 API that you purchase?

6 A. For any API we -- we purchase, we input
7 it into our computers -- sorry, excuse me.

8 Okay. When we purchase and receive, the
9 expiration date of the API is on the bottle. And we just
10 print a label to highlight that expiration date and have
11 it in the computer system.

12 Q. When you say "computer system," is that a
13 database that your pharmacy uses?

14 A. Yes.

15 Q. Is that for internal tracking?

16 A. Yes.

17 Q. Are all of the drugs -- excuse me, all
18 the API that you purchased for TDOC entered in that
19 database?

20 MR. MITCHELL: Object to the form. You
21 can answer.

22 THE WITNESS: Yes.

23 MS. NELSON-MAJOR: I'd request copies of
24 the database that are relevant to the API
25 purchased by the pharmacy for compounding drugs

1 for use by TDOC in executions.

2 MR. MITCHELL: We'll look at it.

3 BY MS. NELSON-MAJOR:

4 Q. Is the midazolam API that you purchased
5 for TDOC sterile or nonsterile?

6 A. Nonsterile.

7 Q. What makes API nonsterile?

8 MR. MITCHELL: Object to the form. You
9 can answer.

10 THE WITNESS: Since it's a bulk powder,
11 it's officially always considered nonsterile.

12 BY MS. NELSON-MAJOR:

13 Q. Why is bulk powder always considered
14 nonsterile?

15 MR. MITCHELL: Same objection.

16 THE WITNESS: It's not something
17 terminally sterilized before we receive it, so it
18 has that terminology of nonsterile product.

19 BY MS. NELSON-MAJOR:

20 Q. Does the entity from which you purchase
21 the API provide you with reports of testing that was
22 conducted on the API?

23 A. Yes.

24 Q. What sorts of things do those reports
25 detail?

1 MR. MITCHELL: Object to the form. You
2 can answer.

3 THE WITNESS: It's a certificate of
4 analysis. It tells you the potency of the
5 product, the dried-on basis, water, the
6 solubility, the pH. It can vary, but those are
7 usually the main -- the main items.

8 MS. NELSON-MAJOR: I'd like to request
9 the certificates of analysis for all API purchased
10 by the pharmacy for use in compounding drugs for
11 TDOC.

12 MR. MITCHELL: Noted.

13 BY MS. NELSON-MAJOR:

14 Q. Outside of the December 20th, 2019,
15 order, do you recall purchasing other bulk amounts of
16 API midazolam for TDOC?

17 A. I recall one other time.

18 Q. When was that?

19 A. It would have been in 2018.

20 Q. Do you remember how many grams of API,
21 roughly, you purchased for TDOC?

22 A. I do not.

23 Q. Did you run out of that first order of
24 bulk midazolam API?

25 MR. MITCHELL: Object to the form.

1 THE WITNESS: I don't -- I don't think
2 so.

3 BY MS. NELSON-MAJOR:

4 Q. Did it expire?

5 A. I believe the expiration date is this
6 year.

7 Q. If you had unexpired midazolam API in
8 stock for TDOC, why did you purchase 60 more grams of
9 midazolam API in 2019?

10 MR. MITCHELL: Form. You can answer.

11 THE WITNESS: I was requested to.

12 BY MS. NELSON-MAJOR:

13 Q. Without naming names, by who?

14 A. The former owner.

15 Q. Did the pharmacy former owner tell you
16 why you were to purchase additional midazolam API?

17 A. No.

18 Q. Did the pharmacy owner direct you as to
19 how much API to purchase?

20 A. Yes. Whatever I ordered was the quantity
21 he had requested.

22 Q. Was that unusual, to have the pharmacy
23 owner direct you as to the quantity of a particular
24 drug to order?

25 MR. MITCHELL: Object to the form.

1 THE WITNESS: Yes.

2 BY MS. NELSON-MAJOR:

3 Q. What was unusual about it?

4 MR. MITCHELL: Same objection.

5 THE WITNESS: In terms of when I purchase
6 other APIs or manufactured products, it's not a
7 request from the owner.

8 Because I wasn't having contact with the
9 drug procure -- procurer from TDOC I didn't know
10 what to order or when, so the former owner
11 would -- would request whenever something was
12 requested from the drug procurer.

13 BY MS. NELSON-MAJOR:

14 Q. Did you ask the pharmacy owner any
15 questions about that direction?

16 A. No.

17 Q. Did you have a conversation about that
18 direction?

19 A. No.

20 Q. How do you choose between the two batches
21 of API that you have on hand when filling an order for
22 compounded midazolam from TDOC?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: I'm sorry, can you say that
25 again?

1 BY MS. NELSON-MAJOR:

2 Q. So you told me that you have two batches
3 of midazolam API that you've purchased for TDOC in
4 storage. How do you choose between those two batches
5 when filling an order for compounded midazolam?

6 MR. MITCHELL: Same objection.

7 THE WITNESS: We just open whichever we
8 received first. Then we use that until it's
9 finished.

10 BY MS. NELSON-MAJOR:

11 Q. Do you know whether you've opened the 60
12 grams of bulk midazolam that was purchased on December
13 20th, 2019?

14 A. I don't believe we have used it, no.

15 Q. When you receive API, do you subject it
16 to any testing prior to compounding?

17 A. No.

18 Q. How much potassium chloride API do you
19 currently have in storage for TDOC?

20 A. I don't remember.

21 Q. Do you recall how many times TDOC has
22 ordered potassium chloride API from you?

23 A. I believe I've ordered it once.

24 Q. Do you recall when that was?

25 A. 2018, I believe.

1 Q. What is the expiration date on that
2 potassium chloride API?

3 A. I don't remember.

4 Q. Is the expiration date included on the
5 certificate of analysis that you mentioned earlier?

6 A. I don't believe it is.

7 Q. Where is the expiration date noted?

8 A. On the bottle itself that contains
9 whatever API it is.

10 Q. And then you take that expiration date
11 and enter it into your internal database?

12 A. Correct.

13 Q. For the potassium chloride API; was that
14 purchased from a third party, as well?

15 A. Yes.

16 Q. Is that sterile or nonsterile?

17 A. Nonsterile.

18 Q. Is that also in bulk powder form?

19 A. It is.

20 Q. When you placed that order for potassium
21 chloride, did you receive a written direction from TDOC
22 to do that?

23 A. No. I was instructed, the same as the
24 midazolam, from my past owner.

25 Q. And that instruction you received from

1 the previous owner, was that in writing?

2 A. No.

3 Q. Do you need a prescription to order API?

4 MR. MITCHELL: Object to the form. You
5 can answer.

6 THE WITNESS: As a pharmacy, no, we don't
7 have to have a prescription before we order
8 something.

9 BY MS. NELSON-MAJOR:

10 Q. Can you pull up Exhibit 45, please?

11 A. I'm sorry; what was that, 45?

12 Q. Four-five.

13 A. Okay. Yes, I have it.

14 Q. An email dated August 13th, 2020. Did
15 you write this email?

16 A. Yes.

17 Q. And without naming names, who did you
18 send it to?

19 A. The drug procurer.

20 Q. You see the subject says "requested
21 info?"

22 A. Yes, I see.

23 Q. Did you send this email in response to a
24 request from the drug procurer?

25 A. Yes.

1 Q. What was that request?

2 A. I don't remember the specifics of the
3 conversation or why I was providing the training
4 requirements. But I just generally remember that he
5 was asking about the training requirements for when we
6 do the compounding.

7 And then the information is just an
8 update on the potassium chloride and midazolam, just to
9 know the quantities and when the expirations were.

10 Q. When you say "look up the training
11 requirements for sterile compounding," requirements
12 from where? Without -- I'm asking whether these were
13 requirements from a professional organization or a
14 state or federal entity.

15 MR. MITCHELL: Pharmacist, can you answer
16 that without -- without giving a proper noun in
17 identifying, you know, an actual entity or an
18 actual state?

19 THE WITNESS: It's just a state
20 requirement to maintain for the initial
21 certification point.

22 The initial certification is not state.
23 But then the second part, where it says two to
24 four hours every two years, would have been a
25 state requirement.

1 BY MS. NELSON-MAJOR:

2 Q. Were the requirements that you provided
3 in this email for certifi- -- certifications that you
4 possess?

5 A. Yes.

6 Q. So I'm looking at the second line of the
7 email, in which you write: "I attached the information
8 for what we made with the KCL and midazolam."

9 Did you -- what attached information are
10 you discussing in this email?

11 MR. MITCHELL: I'm going to object,
12 pursuant to the protective order; unless,
13 Pharmacist, you think you can answer
14 without -- without disclosing an identity or
15 anything that leads to an identity. Do you think
16 you can?

17 THE WITNESS: I'm trying to think of the
18 attached information. I don't remember what it
19 was.

20 MS. NELSON-MAJOR: We would request that
21 attached information in discovery.

22 BY MS. NELSON-MAJOR:

23 Q. Following that line that I just read to
24 you, it says: "For the Potassium we have 3742 grams
25 left and expires March 30th, '21."

1 Can you explain to me what the 3,742
2 grams is?

3 A. The quantity of potassium chloride that
4 we had in stock.

5 Q. Is the 3,742 grams API that you purchased
6 for TDOC specifically?

7 A. Yes.

8 Q. So TDOC purchased over 3,500 grams of
9 potassium chloride from your pharmacy?

10 A. I've only purchased it for them, so I
11 would have to say yes.

12 Q. Since you wrote this email, have you
13 ordered any additional API for TDOC?

14 A. I don't believe so, no.

15 Q. So you currently don't have any unexpired
16 potassium chloride in your possession?

17 MR. MITCHELL: Object to the form.

18 THE WITNESS: Not to my knowledge, no.

19 BY MS. NELSON-MAJOR:

20 Q. Roughly speaking, how many executions
21 would 3,742 grams of potassium chloride supply?

22 MR. MITCHELL: Object to the form.

23 THE WITNESS: I don't know the number.
24 I'd have to do a calculation.

25 BY MS. NELSON-MAJOR:

1 Q. If each execution required 240 ml's of a
2 2 mEq/ml solution, would that help you determine
3 roughly how many executions you could supply with that
4 amount of potassium chloride?

5 A. No, because I have to convert the grams
6 of potassium into mEq's first.

7 Q. Do you typically order API in such large
8 volumes?

9 MR. MITCHELL: Object to the form.

10 THE WITNESS: Yes.

11 BY MS. NELSON-MAJOR:

12 Q. How do you store the API that TDOC
13 orders?

14 MR. MITCHELL: Object to the form. You
15 can answer.

16 THE WITNESS: In the pharmacy.

17 BY MS. NELSON-MAJOR:

18 Q. Is it stored in a refrigerator?

19 A. It is not.

20 Q. Is it stored in a cardboard box?

21 A. On the shelf, at room temperature.

22 Q. And what does "room temperature" mean?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: The pharmacy is maintained
25 under 68 degrees Fahrenheit.

1 BY MS. NELSON-MAJOR:

2 Q. Is that temperature important?

3 A. Yes.

4 MR. MITCHELL: Object to the form.

5 THE WITNESS: It's a requirement for all
6 medications.

7 BY MS. NELSON-MAJOR:

8 Q. For what medications?

9 A. Any medications that have the designation
10 that they are to be stored at room temperature.

11 Q. Do you check the temperature in the
12 storage area?

13 A. Yes.

14 Q. How often?

15 A. It's monitored 24 hours a day.

16 Q. How is it monitored 24 hours a day?

17 A. There's a -- I'm not sure.

18 We have a monitor that is almost like a
19 thermostat, essentially, with remotes in each room of
20 the pharmacy where medications are stored so that the
21 temperature can be monitored.

22 Q. Does it provide an alert if it goes out
23 of range?

24 A. Yes.

25 Q. How does it alert you that it's gone out

1 of range?

2 A. Just beeps.

3 MS. NELSON-MAJOR: I think that's a good
4 stopping point, if we want to take a 10-minute
5 break.

6 MR. MITCHELL: Are we -- are we going to
7 break for lunch? Like should we subsume the two
8 together, or --

9 MS. NELSON-MAJOR: Maybe that makes -- I
10 know it's a little bit early on our end, but maybe
11 that makes sense to do it at this point, if it
12 works for you.

13 MR. MITCHELL: Yes, absolutely.

14 THE VIDEOGRAPHER: We are off the record
15 at 11:42 a.m.

16 (Recess at 11:42 a.m. to 12:33 p.m.)

17 THE VIDEOGRAPHER: We're back on the
18 record. The time is 12:33 p.m.

19 BY MS. NELSON-MAJOR:

20 Q. Pharmacist, I wanted to go back and ask
21 you a couple of questions about midazolam.

22 Based on your testimony, it's my
23 understanding that it is your opinion that midazolam at
24 any dose cannot cause general anesthesia. Am I
25 understanding that correctly?

1 MR. MITCHELL: Object to the form.

2 THE WITNESS: Yes.

3 BY MS. NELSON-MAJOR:

4 Q. And your opinion is that vecuronium
5 bromide is not an anesthetic?

6 MR. MITCHELL: Same objection.

7 THE WITNESS: Yes.

8 BY MS. NELSON-MAJOR:

9 Q. So to be clear, no matter how much
10 midazolam and vecuronium bromide you're given, that
11 will not cause general anesthesia?

12 MR. MITCHELL: Same objection.

13 THE WITNESS: Yes.

14 BY MS. NELSON-MAJOR:

15 Q. So the 500 milligrams in the dose of
16 vecuronium bromide -- bromide will not produce general
17 anesthesia in an inmate before administration of the
18 potassium chloride. Is that right?

19 MR. MITCHELL: Same objection.

20 THE WITNESS: Yes.

21 BY MS. NELSON-MAJOR:

22 Q. So we won't know if the -- excuse me --
23 the inmate is feeling pain because the potassium
24 chloride is a paralytic; is that right?

25 MR. MITCHELL: Same objection.

1 THE WITNESS: I'm sorry, can you say that
2 again?

3 BY MS. NELSON-MAJOR:

4 Q. You testified that potassium chloride --
5 you testified that potassium -- sorry.

6 Sorry. Let me just back up for a second.

7 You testified that the vecuronium bromide
8 is a paralytic; is that right?

9 A. Yes. I used the term "neuromuscular
10 blocker," yes.

11 Q. And that neuromuscular blocking agent
12 prevents an inmate from moving?

13 A. Yes.

14 MR. MITCHELL: Object to the form.

15 BY MS. NELSON-MAJOR:

16 Q. So that paralytic would mask any
17 suffering an inmate might experience upon
18 administration of the final drug; is that right?

19 MR. MITCHELL: Same objection.

20 THE WITNESS: Yes.

21 BY MS. NELSON-MAJOR:

22 Q. Does pentobarbital produce general
23 anesthesia?

24 MR. MITCHELL: Same objection.

25 THE WITNESS: I don't know.

1 BY MS. NELSON-MAJOR:

2 Q. Are you aware of whether pentobarbital is
3 an anesthetic?

4 A. No, I don't believe it is. I only
5 understand its sedative properties.

6 Q. Okay. I'd like to turn back to the
7 compounding of the API. So you explained to us how you
8 have a set amount of API in storage for TDOC. How are
9 you notified about an order from TDOC to compound that
10 API?

11 MR. MITCHELL: Objection.

12 THE WITNESS: I receive a fax.

13 BY MS. NELSON-MAJOR:

14 Q. And what does that fax say?

15 A. It has the order of the compounds that
16 they need and the quantities.

17 Q. Does that fax reference a particular
18 inmate for which the drugs are being ordered?

19 A. Yes.

20 Q. Could you please turn to Exhibit 70.
21 (Exhibit No. 70 marked.)

22 THE WITNESS: Okay. I have it.

23 BY MS. NELSON-MAJOR:

24 Q. Now, do you recognize these documents?

25 A. Yes.

1 Q. What are they?

2 A. These are prescriptions that I would have
3 received as a fax.

4 Q. And without naming names, who do you
5 receive that fax from?

6 MR. MITCHELL: Object to form. You can
7 answer.

8 THE WITNESS: I don't have a name. It
9 just comes via fax.

10 BY MS. NELSON-MAJOR:

11 Q. Is there a prescription required for
12 filling a compounded preparation?

13 A. Yes.

14 Q. Where does that requirement come from?

15 A. From the Board of Pharmacy statutes.

16 Q. Do you require a prescription for all
17 three of the drugs in the lethal injection protocol?

18 MR. MITCHELL: Object to form.

19 THE WITNESS: Yes.

20 BY MS. NELSON-MAJOR:

21 Q. So you receive a prescription for the
22 midazolam?

23 A. Yes.

24 Q. And the potassium chloride?

25 A. Yes.

1 Q. And the vecuronium bromide?

2 A. Yes.

3 Q. Could you flip through Exhibit 70 and
4 tell me whether any of these prescriptions include an
5 order for vecuronium bromide?

6 (Pause.)

7 THE WITNESS: No.

8 BY MS. NELSON-MAJOR:

9 Q. Did you receive separate documents with
10 an order for vecuronium -- vecuronium bromide for each
11 of the inmates?

12 MR. MITCHELL: Object to the form.

13 THE WITNESS: I just took it as a verbal
14 order.

15 BY MS. NELSON-MAJOR:

16 Q. Who did -- who gave you that verbal
17 order?

18 MR. MITCHELL: And again, pursuant to the
19 protective order, if you can answer by role or by
20 some nonidentifying information; otherwise, I'm
21 going to instruct you not to answer.

22 THE WITNESS: I'm unable to answer
23 without giving a name.

24 BY MS. NELSON-MAJOR:

25 Q. So it wasn't the drug procurer that gave

1 you that verbal order?

2 A. No.

3 Q. Was it someone within your pharmacy that
4 gave you the verbal order?

5 A. No.

6 Q. Was it somebody involved in the carrying
7 out of the executions for TDOC that gave you that
8 order?

9 MR. MITCHELL: Object to the form.

10 THE WITNESS: I don't know if they are
11 involved in that process, to be honest.

12 BY MS. NELSON-MAJOR:

13 Q. Did that verbal order come by a phone
14 call?

15 A. Yes.

16 Q. And do you receive a phone call for each
17 time the TDOC is ordering execution drugs for use in an
18 execution?

19 A. For when I've -- yes.

20 Q. So for each one of these paper
21 prescriptions in Exhibit 70 you also received a
22 separate phone call from someone placing an order for
23 vecuronium bromide?

24 MR. MITCHELL: Object to the form.

25 THE WITNESS: Yes.

1 BY MS. NELSON-MAJOR:

2 Q. Do you know why you received those orders
3 by phone call versus written document?

4 A. No.

5 Q. Is the person that makes that phone call
6 to you a doctor?

7 A. No.

8 Q. Do you know whether that person that
9 called you has any medical training?

10 A. I'm not aware of their role.

11 Q. When that person calls you -- and I'm not
12 asking you to tell me their name -- do they
13 specifically identify themselves by their name to you?

14 A. Yes.

15 Q. How do you know that person is affiliated
16 with the Department of Correction if they haven't
17 identified their role to you?

18 MR. MITCHELL: Pharmacist, I'm going to
19 instruct you not to answer if the only way you're
20 able to answer is to give away identifying
21 information. But if -- if you can -- if you can
22 answer that question without doing so, you can of
23 course answer.

24 THE WITNESS: I'm not -- I mean....

25 I'm sorry, I don't know how to answer,

1 apart from I just know that it's in reference to
2 these patients that I'm purchasing it for under
3 this physician.

4 BY MS. NELSON-MAJOR:

5 Q. Is the person that places that oral order
6 for vecuronium bromide -- bromide an attorney?

7 A. I don't know.

8 Q. Outside of filling orders for TDOC's
9 lethal injection drugs do you take oral prescriptions,
10 meaning telephone calls in which someone places an
11 order for a particular, as you said, patient?

12 A. Yes.

13 Q. And when you receive oral prescriptions,
14 are those from doctors?

15 A. Can be.

16 Q. Who else can place oral orders?

17 MR. MITCHELL: Objection.

18 THE WITNESS: Someone in -- that works
19 with them, their MA or nurse or CNA.

20 BY MS. NELSON-MAJOR:

21 Q. And when you get that phone call from an
22 MA or a nurse or a CNA they're conveying a doctor's
23 order to you, right?

24 A. Yes.

25 Q. When you get that oral telephone call

1 ordering the vecuronium bromide, do they tell you the
2 inmate's name?

3 A. Yes.

4 Q. And do they specify the dose, the overall
5 dose that they're seeking?

6 A. Yes.

7 Q. What about concentration?

8 A. No, we just do it as a total dose.

9 Well, you know, I'm sorry. Yes, the
10 concentration, as well.

11 Q. And when you get the orders for midazolam
12 does TDOC specify the vial size they want?

13 A. Yes.

14 Q. And the concentration?

15 A. Yes.

16 Q. What is the size of the vial in which you
17 place the compounded midazolam that you send to TDOC?

18 MR. MITCHELL: Objection.

19 THE WITNESS: Sorry, the size of the vial
20 itself or what's in it?

21 BY MS. NELSON-MAJOR:

22 Q. The volume of the vial.

23 A. Of the midazolam, it contains 5 ml's.

24 Q. Have you ever filled an order for
25 midazolam that TDOC placed in a different-sized vial?

1 A. No.

2 MR. MITCHELL: Objection.

3 BY MS. NELSON-MAJOR:

4 Q. Has the concentration of the midazolam
5 that you've provided to TDOC ever changed?

6 A. No.

7 Q. What is the size of the vial in which you
8 place the compounded potassium chloride that you send
9 to TDOC?

10 MR. MITCHELL: Form.

11 THE WITNESS: 60 ml's.

12 BY MS. NELSON-MAJOR:

13 Q. Has that ever changed?

14 A. No.

15 Q. Has the concentration ever changed?

16 A. No.

17 Q. Can you please turn back to Exhibit 70
18 and look at Page 6. And I apologize; they're not
19 numbered, so you're going to have to count them.

20 A. That's okay.

21 Q. At the bottom, it should say "Mays'
22 Supplemental Responses, Page 71."

23 A. Okay.

24 Q. What is this document?

25 A. I do not know.

1 Q. Did you just testify that Exhibit 70 are
2 the prescriptions that you've received from TDOC
3 ordering compounded drugs for use in lethal injection
4 procedures?

5 A. I'm sorry, can you repeat that?

6 Q. You testified -- did you testify that it
7 was your understanding that Exhibit 70 contained
8 prescriptions from TDOC ordering lethal injection
9 drugs?

10 MR. MITCHELL: Object to form.

11 THE WITNESS: Yes.

12 BY MS. NELSON-MAJOR:

13 Q. And who is this prescription for?

14 A. We're still talking about the one on
15 Page 7?

16 Q. At the bottom right-hand corner, it
17 should be Bates stamped 71.

18 A. Uh-huh.

19 Q. Do you see at the top? Am I looking at
20 it?

21 A. Are we on Exhibit 70 still?

22 Q. Yes.

23 A. Okay.

24 Q. Do you see at the top, it says
25 "Prescription for Stephen West?"

1 A. Yes.

2 Q. Okay. Can you tell me what concentration
3 of potassium chloride this order was for?

4 A. That says potassium chloride, 4 mEq's per
5 ml.

6 Q. And then next to that, it says "No. 2
7 single-dose vials?"

8 A. Yes.

9 Q. What is a single-dose vial?

10 A. A single-dose vial means that that vial
11 is just for one dose itself. You won't be able to
12 extract multiple doses from one vial.

13 Q. And can you turn to the next page in
14 Exhibit 70?

15 A. Okay.

16 Q. What is this prescription? Who is it
17 for?

18 A. Leroy Hall.

19 Q. And what is the concentration of the
20 potassium chloride that was ordered for Leroy Hall?

21 A. 2 mEq's per ml.

22 Q. Do you know why the concentration of
23 potassium chloride changed between prescriptions?

24 A. Yes.

25 Q. What happened?

1 A. We were unable to compound the potassium
2 chloride at a 4 mEq-per-ml dose.

3 Q. How were you unable to compound the
4 potassium chloride for a 4 mEq-per-ml dose?

5 A. The API would not dissolve.

6 Q. When the API does not dissolve, is that
7 the same thing as something falling out of solution?

8 A. Yes, ma'am.

9 Q. And why is falling out of solution a
10 problem?

11 MR. MITCHELL: Object to the form.

12 THE WITNESS: Because you're wanting to
13 infuse any medication, if it's an injection, as a
14 complete liquid. You don't want to be injecting a
15 powder.

16 BY MS. NELSON-MAJOR:

17 Q. If the solution has fallen out of -- I'm
18 sorry, yes.

19 If a drug has fallen out of solution,
20 does that impact the amount of the drug that's actually
21 delivered to the patient?

22 MR. MITCHELL: Objection.

23 THE WITNESS: Yes, it could. You can't
24 guarantee anymore what the dose is.

25 BY MS. NELSON-MAJOR:

1 Q. Who discovered that the potassium
2 chloride was falling out of solution?

3 MR. MITCHELL: Form.

4 THE WITNESS: I did.

5 BY MS. NELSON-MAJOR:

6 Q. How did you determine that?

7 A. When we were initially trying to compound
8 the medication prior to a prescription for a specific
9 person, just when we had tried to do it the first time
10 I was not able to completely have it dissolved.

11 Q. Did you compound a different batch of
12 potassium chloride in an attempt to fulfill -- to fill
13 the prescription for Mr. West?

14 A. Yes.

15 Q. Was that second batch compounded at a
16 different concentration?

17 A. Yes.

18 Q. What concentration was that?

19 A. 2 mEq's per ml.

20 Q. What did you do with the potassium
21 chloride that was falling out of solution?

22 A. Dispose of it properly.

23 Q. And how do you dispose of a solution that
24 has fallen out properly?

25 A. Putting the medication in a red bin

1 that's annotated for that kind of dispensing so that it
2 can't be used.

3 Q. Could you turn to Exhibit 23, please.

4 A. Okay.

5 Q. It's an email dated August 8th, 2019.
6 Did you send this email?

7 A. I don't think so.

8 Q. I'm sorry, I didn't mean to cut you off.
9 Were you about to say something else?

10 A. No, I think I just hit the table. I'm
11 sorry.

12 Q. All right. Did you run any sort of test
13 on the potassium chloride that fell out of solution
14 once you identified the problem?

15 A. I believe we did still send it out for
16 testing, yes. But then we -- and I believe it passed,
17 but I just said that it was falling out.

18 So that's when I suggested we make it as
19 2 mEq per ml instead of 4 mEq per ml.

20 Q. What is a suitability or a methodology
21 test?

22 A. I don't -- I can't tell you what in each
23 step they look at and test. But it's just an overall
24 test that's saying whatever process we're using to
25 compound whichever medication we're making that it's

1 staying sterile and that the potency is okay and
2 bacterial endotoxin's okay. And I'm not aware of what
3 else that entails.

4 Q. So that batch of potassium chloride that
5 fell out of solution, do you recall when that was
6 compounded?

7 A. I don't remember the exact time, but I'm
8 sure it would have been when that first -- that order
9 that we were looking at that was for the 4 mEq's. I
10 apologize, I forget the person's name it was.

11 Q. Could you please turn to Exhibit 49.

12 A. Okay.

13 Q. Have you seen this document before?

14 A. No.

15 Q. Did the lawyers representing defendants
16 Mays and Parker ask you for information about the dates
17 on which you compounded and shipped drugs to TDOC?

18 A. I don't recall that.

19 Q. Can you turn to Page 5?

20 A. Okay.

21 Q. That's the subheading (a). And it says:
22 "The compounding of chemicals intended for use in
23 executions"; and underneath that it lists a bunch of
24 dates.

25 A. Okay.

1 Q. If you take a look at these dates, can
2 you tell me whether you have any reason to believe that
3 the dates listed here are not the dates on which you
4 compounded potassium chloride and midazolam for TDOC?

5 MR. MITCHELL: Object to form.

6 THE WITNESS: I don't remember the exact
7 dates. The timing looks accurate.

8 BY MS. NELSON-MAJOR:

9 Q. So did you first compound potassium
10 chloride for TDOC on August 5th, 2019?

11 MR. MITCHELL: Same objection.

12 THE WITNESS: I don't remember the exact
13 date.

14 BY MS. NELSON-MAJOR:

15 Q. The potassium chloride that fell out of
16 solution you did not send to TDOC?

17 A. I did not.

18 Q. Prior to August 5th, 2019, the date on
19 which you first compounded potassium chloride, were you
20 providing TDOC with commercially manufactured potassium
21 chloride?

22 A. I did not.

23 Q. And I think you -- you testified earlier
24 that you first provided lethal injection drugs to TDOC
25 in 2018; is that right?

1 A. Yes.

2 Q. In what month, if you recall?

3 A. It would have been that this one on this
4 Page 5 may be correct -- July in 2018. It had to have
5 been between -- yeah, I would say that that's probably
6 accurate.

7 Q. So prior to August 5th, 2019, the date on
8 which you first compounded potassium chloride for TDOC,
9 you never provided another version of potassium
10 chloride to TDOC?

11 A. I did not.

12 Q. Do you know whether TDOC was ordering
13 potassium chloride from a different pharmacy up until
14 that point?

15 A. I do not.

16 Q. Okay. So a bit earlier we talked about
17 the United States Pharmacopoeia, also known as USP.
18 Does the USP publish reference standards?

19 A. References to what?

20 Q. Guidelines that govern various parts of
21 the practice of pharmacy.

22 A. Yes.

23 (Exhibit No. 71 marked.)

24 BY MS. NELSON-MAJOR:

25 Q. Can you please turn to Exhibit 71.

1 A. Okay.

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. It is the standards made by USP for
6 compounding nonsterile preparations.

7 (Exhibit No. 72 marked.)

8 BY MS. NELSON-MAJOR:

9 Q. And then can you please turn to Chapter
10 72? I'm sorry, Exhibit 72, not Chapter 72.

11 A. Okay. I was like, "I don't know any
12 chapters." Okay.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. What is it?

16 A. The USP Chapter 797, which is for sterile
17 compounded preparations.

18 Q. Can you give me some examples of what a
19 nonsterile compounded preparation is?

20 A. A capsule, a tablet, oral solution,
21 suspension.

22 Q. And what distinguishes a nonsterile
23 compounded preparation from a sterile compounded
24 preparation?

25 MR. MITCHELL: Same objection.

1 THE WITNESS: A sterile solution has to
2 follow these guidelines. It has to fit within the
3 regulations that this details.

4 BY MS. NELSON-MAJOR:

5 Q. And are compounded preparations for use
6 in injection categorically sterile compounded
7 preparations?

8 A. Yes.

9 MR. MITCHELL: Form.

10 BY MS. NELSON-MAJOR:

11 Q. And are there any other statutes in the
12 USP that govern compounding?

13 MR. MITCHELL: Form.

14 THE WITNESS: Compounding specifically,
15 no.

16 BY MS. NELSON-MAJOR:

17 Q. As a licensed pharmacist, are you
18 required to abide by the USP standards that we just
19 discussed when compounding drugs?

20 A. Yes.

21 Q. Are there any agencies that enforce
22 compliance with USP standards?

23 MR. MITCHELL: I'm going to object,
24 pursuant to the protective order, any -- I mean,
25 can you just reword that question,

1 Ms. Nelson-Major?

2 BY MS. NELSON-MAJOR:

3 Q. I'm not asking you to name a particular
4 agency that has enforcement oversight over your
5 pharmacy; rather, I'm asking are these advisory
6 guidelines, or is there some body out there that has
7 authority to ensure that your pharmacy is following
8 these guidelines?

9 A. Yes.

10 Q. And what bodies, without naming the name
11 of the state, are responsible for enforcing those
12 guidelines?

13 A. The Board of Pharmacy.

14 Q. Are sterile and nonsterile preparations
15 compounded in the same area in your pharmacy?

16 A. No.

17 Q. Is there a dedicated area in your
18 pharmacy for sterile compounding?

19 A. Yes.

20 Q. Is that area separated from the rest of
21 the pharmacy by a door?

22 A. Yes.

23 Q. And in that sterile compounding area is
24 there positive air pressure?

25 A. Yes.

1 Q. And why is that?

2 MR. MITCHELL: Object to the form.

3 THE WITNESS: So -- am I okay?

4 BY MS. NELSON-MAJOR:

5 Q. Go ahead.

6 A. The positive air pressure, it ensures
7 that the air from outside that door that's
8 distinguishing where the sterile compounding is taking
9 place and the general pharmacy area, that that air from
10 the outside general pharmacy area isn't coming into the
11 sterile compounding area and contaminating.

12 Q. And is that air flow pressure
13 differential certified by some agency or company?

14 A. Yes.

15 Q. Is that a private company that certifies
16 your air pressure?

17 A. That initially did it, yes; and then
18 retests, yes.

19 Q. And how often are those retests done?

20 A. Every six months.

21 Q. How often does that volume of air
22 exchange in that sterile compounding area?

23 MR. MITCHELL: Objection.

24 THE WITNESS: It can change pretty often.

25 BY MS. NELSON-MAJOR:

1 Q. Is the rate of change something that you
2 monitor?

3 A. Yes.

4 Q. And how do you monitor that?

5 A. We just have a gauge that we can see the
6 pressure differentials, but we just have to annotate it
7 and document it daily.

8 Q. Do you have to provide those logs to the
9 Board of Pharmacy?

10 A. On request, yes.

11 MS. NELSON-MAJOR: I'd request the logs
12 for the time period in which that compounded
13 preparations were made for TDOC.

14 MR. MITCHELL: We'll look into that.

15 BY MS. NELSON-MAJOR:

16 Q. Do you conduct media field testing?

17 A. Yes.

18 Q. What is media field testing?

19 A. Media field testing is just testing the
20 techniques for anyone who is compounding -- sterile
21 compounding, I'm sorry -- in the pharmacy, that they
22 are still using regular -- the techniques guided by USP
23 properly.

24 Q. And do you conduct media field testing
25 for high-risk compounding?

1 A. Yes.

2 Q. Medium compounding?

3 A. You only have to do it for one. So since
4 we do the highest -- high risk, then we perform that
5 test for the high risk.

6 Q. And how often do you have to do that?

7 A. Every six months.

8 Q. And you earlier mentioned that there was
9 a pharmacy technician who was involved in helping you
10 prepare the compounded preparations for TDOC. Does
11 that person do media field testing, as well?

12 A. Yes.

13 MS. NELSON-MAJOR: I'd request copies of
14 the media field testing reports for both the
15 pharmacist and the pharmacist technicians during
16 the time period in which the drugs were
17 compounded.

18 MR. MITCHELL: We'll look into that.

19 BY MS. NELSON-MAJOR:

20 Q. Do you also conduct gloved fingertip
21 sampling?

22 A. Yes.

23 Q. And what is that?

24 A. Testing your technique of properly
25 handwashing and donning and garbing and putting on your

1 gloves to maintain clean surfaces.

2 And then you use a TSA plate to
3 essentially just put your fingertips on, and then it's
4 incubated to see if there's any growth.

5 Q. And how often do you do that gloved
6 fingertip sampling?

7 A. Every six months.

8 Q. And when was the last time you did that
9 test?

10 A. It was the end of January, I believe.

11 Q. And does the pharmacy technician who's
12 involved in helping you prepare the compounded
13 preparations for TDOC also do that gloved fingertip
14 sampling?

15 A. Yes.

16 Q. And do you keep records of those tests,
17 as well?

18 A. Yes.

19 MS. NELSON-MAJOR: And I imagine
20 Mr. Mitchell knows what I'm going to say next,
21 but I'd request copies of those records, as well,
22 for the relevant time period.

23 BY MS. NELSON-MAJOR:

24 Q. If you could approximate, what portion of
25 your work is dedicated to filling compounded

1 prescriptions versus commercially manufactured orders?

2 A. It's hard to quantify it that way, just
3 because we -- I do both all day. The compounded is
4 mostly nonsterile. It's more time-consuming. So it
5 still takes all day, but the percentage of actual
6 prescriptions is not as high, if that makes sense.

7 Q. And of the work you do compounding
8 preparations, what proportion would you say is devoted
9 to sterile compounded preparations?

10 A. I would say 20 to 30 percent.

11 Q. Is the compounding of midazolam for
12 injection subject to USP 797?

13 MR. MITCHELL: Objection.

14 THE WITNESS: Yes.

15 BY MS. NELSON-MAJOR:

16 Q. Because it's a sterile preparation?

17 A. Yes.

18 Q. What contamination risk level in Chapter
19 797 do you assign to the midazolam that you compound
20 for TDOC?

21 MR. MITCHELL: Same objection.

22 THE WITNESS: It's a high risk.

23 BY MS. NELSON-MAJOR:

24 Q. Why is that high risk level assigned?

25 A. Because it is -- it is started as a

1 nonsterile ingredient before compounding.

2 Q. So when you receive an order for a
3 compounded midazolam from TDOC, can you explain to me
4 what you do to that API to prepare it for use by TDOC?

5 MR. MITCHELL: Form objection.

6 THE WITNESS: Yes. We have a log, a
7 master log of a formula that we follow each time
8 it is compounded. There are certain ingredients
9 used to dissolve the midazolam so that it is no
10 longer in a powder form but uniform in the liquid.

11 And then we dilute it so that the total
12 volume is the volume and concentration that is
13 requested.

14 BY MS. NELSON-MAJOR:

15 Q. All right. Are the ingredients that you
16 add to the midazolam API sterile or nonsterile?

17 A. Both.

18 Q. What sterile ingredients do you add to
19 the midazolam API?

20 A. I'm trying to remember what we bring --
21 use to bring to the total volume. It's either sterile
22 water or sterile sodium chloride, but I don't remember
23 off the top of my head what it is.

24 Q. Is sterile sodium chloride sterile
25 saline?

1 A. Yes, ma'am.

2 Q. In addition to the saline or sterile
3 water that you just mentioned, what else do you add to
4 the midazolam API?

5 A. The only thing that I remember right now
6 is hydrochloric acid, which helps to use to dissolve
7 it.

8 Q. Is that hydrochloric acid sterile or
9 nonsterile?

10 A. It's nonsterile.

11 Q. Are you the person who actually adds
12 those ingredients to the midazolam API?

13 MR. MITCHELL: Objection.

14 THE WITNESS: No.

15 BY MS. NELSON-MAJOR:

16 Q. Who does that, without naming names?

17 A. The technician we have discussed.

18 Q. Are you present when the technician does
19 that compounding?

20 A. Yes.

21 Q. Why does the technician have the
22 ingredients, as opposed to you?

23 A. The technician has the capability and
24 training to make compounds. I'm needed for other
25 things throughout the day, as well, so I can monitor

1 very closely and still be available for other things.

2 Q. But to be clear, you're in the room while
3 the technician is physically adding the ingredients to
4 the API; is that right?

5 A. No, I'm not in the sterile compounding
6 room. It's a clear -- not glass, but like a plastic
7 that I can see through.

8 Q. Can you see the volume of the ingredients
9 as the technician is measuring them?

10 A. Yes.

11 Q. How can you see that?

12 MR. MITCHELL: Objection.

13 THE WITNESS: He either shows it to me,
14 or I can see through -- through the room I can see
15 him. Because it's clear; like a window, almost.

16 BY MS. NELSON-MAJOR:

17 Q. How does he show it to you?

18 A. He'll tilt it in a way so that I can see
19 it from where I'm standing. Even though he's within
20 the hood, I can still read clearly what he's measuring.

21 Q. And what is "it?" Is it a scale?

22 A. Yeah, a scale, or if it's a measurement
23 in a syringe. Whatever -- whatever measurement he's
24 making, yes.

25 Q. So when the technician is preparing a

1 sterile compound, you said he's in a hood?

2 A. Yes, ma'am.

3 Q. Can you describe what that is to me?

4 A. Yes. It's a biological safety cabinet,
5 so it meets the requirements of USP 797 of an
6 engineering control that we're allowed to use that will
7 maintain the integrity that they want while we're
8 compounding.

9 Q. Do you maintain a visual on the
10 technician during that entire process, or are you
11 coming and going?

12 A. I'm not there 100 percent, no. Yeah,
13 it's in and out.

14 Q. Who fills out that master log formula
15 that you mentioned?

16 A. The original master log was made by
17 myself.

18 Q. And is the compounding process each time
19 it happens documented in some way?

20 A. Yes.

21 Q. And how is that documented?

22 A. That master log is reprinted, and it
23 generates a lot number with a date specific for when
24 it's made and cross-references for who it was made for.

25 Q. And does the technician fill that in with

1 amounts of each ingredient added in some way?

2 A. Yes, as he's performing it. And I check
3 him.

4 MS. NELSON-MAJOR: I'd request both the
5 original master log formula, as well as any one
6 generated in the compounding of midazolam or
7 potassium chloride for TDOC.

8 MR. MITCHELL: I made a note of it.
9 Maybe if you could send a follow-up email.

10 BY MS. NELSON-MAJOR:

11 Q. Okay. I'd like to ask about the
12 potassium chloride now. Is the compounding of
13 potassium chloride subject to USP Chapter 797?

14 A. Yes.

15 Q. So it's also a sterile preparation?

16 A. Yes.

17 Q. And what contamination risk level in
18 Chapter 797 do you assign to the potassium chloride
19 preparation?

20 MR. MITCHELL: Objection.

21 THE WITNESS: High risk.

22 BY MS. NELSON-MAJOR:

23 Q. And why is the high risk level assigned?

24 A. Because it is starting with the API that
25 is nonsterile in powder form; so it's automatic high

1 risk, as well.

2 Q. And to the potassium chloride API, what
3 ingredients are added?

4 A. I believe it's just sterile water alone.

5 Q. And again, is that something the pharmacy
6 technician does or that you do?

7 A. Yes. We follow the same process with the
8 midazolam as the potassium chloride.

9 Q. So the potassium chloride is also
10 compounded under that hood you described?

11 A. Yes, ma'am.

12 Q. And the same master log formula, as well?

13 A. No, It's a separate formula, because it's
14 two -- it's in two different vials, two different
15 formulas. Yes, so each compound has its own master
16 formula. They don't combine.

17 Q. After you're finished -- or excuse me,
18 after the pharmacy technician is finished adding the
19 ingredients to the API, what happens to the compounded
20 preparation?

21 A. It's placed in its -- in the vials.

22 Q. Are they sterilized in any way?

23 A. So the vials themselves are already
24 sterile. While we're -- so that the medication itself
25 will be in a syringe. That syringe will have a filter.

1 A filter -- it's not a needle, but it's a filter that
2 you put on it to internally sterilize it while it's
3 going into the final container, the vial.

4 Q. And what size is the filter on that
5 syringe?

6 A. I believe that's a 2-micron filter --
7 sorry, 0.2-micron filter.

8 Q. And how are the vials presterilized?
9 What process is used?

10 A. I don't sterilize them in the pharmacy.
11 I purchase them as sterile vials. I'm not aware of the
12 process they do to make them sterile.

13 Q. Do you print a beyond use date on the
14 vials?

15 A. Yes, ma'am.

16 Q. What is a beyond use date?

17 A. 45 days.

18 Q. And can you explain what the term "beyond
19 use date" means?

20 A. Yeah. Beyond use date is different from
21 an expiration date, in that it's a date at which you
22 are no longer able to dispense or transport a
23 medication for use, or some kind sterile preparation
24 for use.

25 Q. What happens to a drug after its beyond

1 use date?

2 MR. MITCHELL: Form.

3 THE WITNESS: Could be anything. It
4 could be the sterility is lost, the potency
5 changes.

6 BY MS. NELSON-MAJOR:

7 Q. And you said the beyond use date is 45
8 days. Is that for both the midazolam and the potassium
9 chloride?

10 A. Yes.

11 Q. Is that a date that you determined?

12 A. No.

13 Q. Who determined that date?

14 A. In USP 797, it has the guideline that I
15 follow.

16 Q. So the beyond use date doesn't vary from
17 preparation to preparation?

18 A. It can, depending on the risk level or
19 what storage you're -- what -- how you're storing it,
20 what temperature that you're storing it in.

21 Q. Can you explain to me how the temperature
22 of the storage affects the calculation of the beyond
23 use date?

24 A. So within USP 797 it has a designation
25 for room temperature in the refrigerator and in the

1 freezer. And it also has those three things.

2 Q. So the beyond use date; is that affected
3 by the type of vial in which the drug is stored?

4 A. Not to my knowledge, no.

5 Q. And so the beyond use date determination
6 is not individualized to the particular preparation
7 you're making?

8 MR. MITCHELL: Object to the form.

9 THE WITNESS: You mean as each individual
10 medication?

11 BY MS. NELSON-MAJOR:

12 Q. Yes, that's what I mean.

13 A. Yeah. No, it's the same.

14 Q. So you wouldn't rely on a chemical, let's
15 say for example, when determining the beyond use date?

16 A. No.

17 Q. And you wouldn't consult other studies or
18 literature about the particular drug you're working
19 with when determining the beyond use date?

20 A. You can, if -- if you want to make it
21 less than what USP says. You can't extend it beyond
22 without doing studies.

23 Q. In addition to the beyond use date, do
24 you print any other information on the vials that you
25 prepare for TDOC?

1 A. I'm sorry, can you say that again?

2 Q. So you testified that you print the
3 beyond use date on the vials provided to TDOC. Do you
4 print any other information on the vials?

5 A. Yes.

6 Q. What information do you print on the
7 vials besides the beyond use date?

8 A. It'll have the name, the concentration,
9 the volume, directions, patient's name, prescription
10 number, how to store it. The quantity in the vial, if
11 I didn't say that already.

12 I may be leaving something out.

13 Q. When you say "directions," directions for
14 what?

15 A. On the intended use. So whatever the
16 prescription itself said, "Use as directed," or....

17 Q. And when you say you contain -- you print
18 information about storing the drugs, what do you mean
19 by that?

20 A. If it's to be kept at room temperature,
21 refrigerated, or frozen; whatever that is, that's on
22 the vial as well.

23 Q. Do you keep copies of the labels that you
24 affix to the vials for TDOC?

25 A. They are saved in the database we use,

1 yes.

2 MR. MITCHELL: I'd request copies of the
3 database printout for all of the potassium
4 chloride and midazolam compounded for TDOC.

5 BY MS. NELSON-MAJOR:

6 Q. So after you have labeled the vials,
7 where do you store them in your pharmacy?

8 A. In the freezer.

9 Q. Is that a medical-grade freezer?

10 A. It's a regular freezer. We just have to
11 maintain the temperatures in the logs of that.

12 Q. When you say "regular freezer," do you
13 mean the type of freezer that you might find in
14 someone's home?

15 A. Yes.

16 Q. Does it have a built-in thermometer
17 gauge?

18 A. It's not built in, no; it's external.

19 Q. So you don't have to open the freezer to
20 read the temperature?

21 A. No.

22 Q. Does it have an alarm to alert you if it
23 goes out of temperature range?

24 A. Yes.

25 Q. And what temperature is the freezer kept

1 at?

2 A. Between negative 25 to negative 10
3 degrees Celsius.

4 Q. And why is that temperature range set to
5 that?

6 A. That's what's determined in USP 797 to
7 have that 45-day BUD.

8 Q. And why is it important to follow that
9 temperature range?

10 A. Because if I don't follow that, then I'm
11 not following their guidelines.

12 Q. And as a scientific or pharmacological
13 matter, why is that range important?

14 MR. MITCHELL: Object to form.

15 THE WITNESS: Just to maintain the
16 integrity of whatever that was made.

17 BY MS. NELSON-MAJOR:

18 Q. And what purpose does that alarm system
19 serve?

20 MR. MITCHELL: Same objection.

21 THE WITNESS: To notify if the range that
22 you set the temperature gauge to has gone out
23 of -- the freezer or refrigerator is out of the
24 range that you -- that you would like or need.

25 BY MS. NELSON-MAJOR:

1 Q. And what would happen if that alert
2 sounded? What would you do?

3 A. I would take whatever corrective action
4 course I needed to ensure that the temperature was
5 properly adjusted.

6 Q. Is it important to have an external
7 temperature monitor on the freezer versus an internal
8 temperature monitor?

9 A. Sorry. When you say "external," with --
10 are you meaning like it's built into the freezer
11 itself, or --

12 Q. The way I understood it is your
13 temperature thermometer is something you can see
14 without opening the freezer door; is that correct?

15 A. Yes, that's correct.

16 Q. So why is it important to be able to
17 read -- or is it important to be able to read the
18 temperature without opening the freezer?

19 MR. MITCHELL: Object to the form.

20 THE WITNESS: So you don't have to open
21 it for -- for no nec- -- unnecessary reason.

22 BY MS. NELSON-MAJOR:

23 Q. And why would you want to avoid
24 unnecessarily opening the freezer?

25 MR. MITCHELL: Same objection.

1 THE WITNESS: Just to maintain the
2 temperature and integrity of whatever's in there.

3 BY MS. NELSON-MAJOR:

4 Q. Would you store compounded drugs in a
5 refrigerator or freezer without those features?

6 MR. MITCHELL: Same objection.

7 THE WITNESS: No.

8 BY MS. NELSON-MAJOR:

9 Q. Why not?

10 MR. MITCHELL: Same objection.

11 THE WITNESS: Because based on our
12 guidelines, we have to be able to monitor the
13 temperatures.

14 BY MS. NELSON-MAJOR:

15 Q. What could happen to the drugs if the
16 temperature exceeds the range you provided for us?

17 MR. MITCHELL: Form objection.

18 THE WITNESS: It could render them
19 useless so that they're not able to be used.

20 BY MS. NELSON-MAJOR:

21 Q. Are the drugs that you compound for TDOC
22 subject to a visual inspection at some point in the
23 compounding process?

24 MR. MITCHELL: Objection.

25 THE WITNESS: Yes.

1 BY MS. NELSON-MAJOR:

2 Q. When does that visual inspection occur?

3 A. Throughout the process and at the end,
4 whenever it's put into the end vial or whatever storage
5 container.

6 Q. And who does that visual inspection?

7 A. I do.

8 Q. But at some point, the pharmacy
9 technician called you into the room to take a look at
10 the compounded preparation?

11 A. While he's compounding I'm just there
12 walking in and out, watching him. And then whenever he
13 puts it into that final storage container and it's
14 brought out of the compounding area, I do a last visual
15 inspection.

16 Q. Is a layperson qualified to conduct that
17 visual inspection?

18 MR. MITCHELL: Same objection -- or form
19 objection.

20 THE WITNESS: I'm not aware of anyone
21 other than myself who would be able to before
22 dispensing.

23 BY MS. NELSON-MAJOR:

24 Q. In the course of your graduate degree in
25 pharmacy, did you receive instruction on the proper way

1 to conduct a visual inspection?

2 A. I don't remember specific directions
3 on -- on it, but I know that I've learned it somewhere.
4 I just don't remember where.

5 Q. To conduct a visual inspection, do you
6 simply hold up the vial and take a look at it or is
7 there something more involved in that process?

8 MR. MITCHELL: Object to form.

9 THE WITNESS: Essentially, yes, you're
10 looking at the vial, the integrity of the vial,
11 whatever is contained inside it to make sure that
12 it does -- you don't see any particulates or
13 anything visually.

14 You put it behind -- in front of a
15 contrasting color so you can determine any
16 visual -- anything visually that you can.

17 BY MS. NELSON-MAJOR:

18 Q. After the compounding is completed, do
19 you test the drugs that you compounded for TDOC?

20 A. Yes.

21 Q. What sorts of tests do you perform?

22 A. Sterility testing, potency testing, and
23 bacterial endotoxin testing.

24 Q. Do you test the pH of the completed
25 prepar- -- preparation?

1 A. Yes.

2 Q. What does sterility testing measure?

3 A. It's measuring if there's any growth of
4 any fungus or bacteria within the final compounded
5 preparation that was made.

6 Q. Who performs the sterility testing of the
7 drugs you compound for TDOC -- I'm sorry, without
8 naming the entity. Let me try it this way.

9 Does your pharmacy perform the sterility
10 testing of the drugs you compound for TDOC?

11 A. It's a third party.

12 Q. And again, without naming names, have you
13 always used the same third party to test the drugs you
14 compound for TDOC?

15 A. Yes.

16 Q. Are you aware of whether this third party
17 has ever been issued a warning letter by the FDA?

18 A. Yes.

19 Q. The testing lab has been issued a warning
20 letter by the FDA?

21 A. I don't -- I don't know how to answer
22 without kind of explaining who they are. I'm sorry.

23 Q. Let me try it this way. Has the testing
24 lab -- I'm sorry, the third party that you work with,
25 are they regularly inspected by the FDA that you're

1 aware?

2 A. I'm not aware of the frequency, no.

3 Q. Are you aware of whether they have been
4 inspected by the FDA at some point?

5 A. Yes.

6 Q. Are you aware whether those inspections
7 led to any negative findings by the FDA?

8 MR. MITCHELL: Object to the form.

9 THE WITNESS: Yes.

10 BY MS. NELSON-MAJOR:

11 Q. Without providing the name of the testing
12 facility, can you describe to me the nature of those
13 negative findings?

14 MR. MITCHELL: And I'm going to object,
15 to the extent -- pursuant to the protective order,
16 to the extent that the answer will identify or
17 lead to the identification of that testing agency.

18 Pharmacist, if you think you can answer
19 without doing so then I'll let you answer;
20 otherwise, I'll instruct you not to answer.

21 And if there's confusion about this
22 point, maybe we can table this for later and take
23 this up at the end, Ms. Nelson-Major.

24 And you may have a whole line of
25 questioning of this -- this ilk; and if that's the

1 case, maybe we can take it up at the end,
2 depending -- depending on what the Pharmacist
3 thinks he or she can answer right now.

4 THE WITNESS: I don't think I can really
5 answer that without being able to let out who it
6 is.

7 MS. NELSON-MAJOR: I'm fine with that,
8 Mr. Mitchell. I have a couple of questions that I
9 don't -- that are tangential to this topic, but I
10 don't think we'll get into the meat of it.

11 BY MS. NELSON-MAJOR:

12 Q. Does your pharmacy still work with this
13 third-party testing agency?

14 A. Yes.

15 Q. So when did you learn of the negative
16 findings that we've been talking about?

17 MR. MITCHELL: I'm going to -- can we
18 just incorporate that within the same objection,
19 because that may implicate the same thing. And
20 we'll just take that up at the end, if that's
21 okay.

22 MS. NELSON-MAJOR: Okay. That's fine.

23 BY MS. NELSON-MAJOR:

24 Q. Does this same lab also perform the
25 testing for potency?

1 A. Yes.

2 Q. And then bacterial endotoxins?

3 A. Yes.

4 Q. And the pH?

5 A. The pH is actually done internally.

6 Q. Do you test the pH before the compounded
7 preparation is put into the vials or after?

8 A. Before.

9 Q. And who performs that pH testing at your
10 pharmacy?

11 A. The technician.

12 Q. And how is that test performed?

13 MR. MITCHELL: Object to the form.

14 THE WITNESS: With a pH meter.

15 BY MS. NELSON-MAJOR:

16 Q. As to the sterility testing, how is that
17 performed? If you're aware.

18 A. I am not.

19 Q. What about the potency testing?

20 A. Yeah, I'm not aware of the mechanics of
21 it.

22 Q. What about the bacterial endotoxins?

23 A. No, ma'am; the same.

24 Q. Why do you test for pH?

25 A. There's a range within the log of what pH

1 should be. So prior to putting it in that end vial or
2 container, we just make sure that it's in the range
3 that's requested.

4 Q. And when you say "log," are you referring
5 to the master log formula?

6 A. Yes.

7 Q. And is that something you record or that
8 the technician records?

9 A. The technician records it after he
10 performs the pH analysis.

11 Q. And so you said that you have this third
12 party conduct three tests: sterility, potency, and
13 bacterial endotoxins. Why are these three tests
14 performed?

15 MR. MITCHELL: Form.

16 THE WITNESS: I do not -- whenever I
17 started doing this and communicating that we were
18 going to be making these for TDOC, those were the
19 tests that were requested.

20 BY MS. NELSON-MAJOR:

21 Q. Requested by whom, if you know, without
22 naming names?

23 A. I didn't communicate directly with TDOC.
24 It would have been with my past owner.

25 Q. Did the past owner tell you that this was

1 the universe of tests that you should complete on each
2 compounded preparation for TDOC?

3 A. Yes.

4 Q. Are these collection of tests typical of
5 what you do for a prescription in the ordinary course
6 of business?

7 A. Of a compounded sterile preparation?

8 Q. Yes.

9 A. Yes, they're normal tests.

10 Q. Are there other tests that you routinely
11 run on sterile compounded preparations that you don't
12 run on the compounded preparations for TDOC?

13 MR. MITCHELL: Object to form.

14 THE WITNESS: No.

15 BY MS. NELSON-MAJOR:

16 Q. Besides the potassium chloride that fell
17 out of solution, have you ever decided not to ship a
18 compounded preparation to TDOC based on the results of
19 these tests?

20 A. Yes.

21 Q. How many times has that happened?

22 A. Only twice.

23 Q. Do you remember when?

24 A. It would have been the first time when we
25 were making -- the first time. So that would have been

1 in 2018.

2 Q. The first time was the midazolam?

3 A. Yes, apart from the potassium chloride we
4 already discussed.

5 Q. And so when you said the second time,
6 you're referring to the potassium chloride that fell
7 out of solution?

8 A. No, I believe the first two times of the
9 midazolam were not -- were not sent out. They were
10 redone.

11 Q. I want to talk about the first time you
12 decided not to send the midazolam out. Which test
13 caused you not to send the midazolam out?

14 A. The potency.

15 Q. And what about the second time?

16 A. The potency.

17 Q. Was the -- for the first time, was the
18 potency lower or higher than you expected?

19 A. Lower.

20 Q. What about the second time?

21 A. Lower.

22 Q. Did you make changes to the methodology
23 for compounding midazolam based on these two test
24 results?

25 A. Not the methodology, no.

1 Q. What if any adjustments did you make?

2 A. We made adjustments to the master formula
3 for the amount of hydrochloric acid to dissolve the
4 midazolam, the number that was needed to dissolve it
5 properly.

6 Q. Was it not fully dissolving during the
7 first two times?

8 A. No, we added too much. So because -- so
9 since the potency came back low we were adding too
10 much, and it was essentially disintegrating it and
11 making it not there. So instead of, what, 50
12 milligrams per ml, it was like 35 or something to that
13 matter.

14 Q. Did you have discussions with anyone at
15 TDOC about these initial failed preparations?

16 A. I did not.

17 Q. Did someone else at your pharmacy, if
18 you're aware?

19 A. It would have been the past owner.

20 Q. Have you ever had to recall a shipment of
21 compounded drugs?

22 A. I have not, no.

23 Q. What is the acceptable pH range for the
24 midazolam that you compound for TDOC?

25 A. I don't remember, but it isn't -- it's

1 specifically stated in the master log.

2 Q. And what about the potassium chloride?
3 Do you recall the acceptable pH range for that?

4 A. I don't remember, no.

5 Q. Do you provide copies of the reports that
6 you identified just now to TDOC each time you compound
7 the preparation for use in executions?

8 MR. MITCHELL: Form.

9 THE WITNESS: I don't know if I've
10 actually given -- I don't remember if I actually
11 give the report. No, I think I just communicate
12 what -- what it was, but not the report itself.

13 BY MS. NELSON-MAJOR:

14 Q. Do you keep records of those reports?

15 A. Yes.

16 MS. NELSON-MAJOR: I'd request copies of
17 those reports in discovery.

18 BY MS. NELSON-MAJOR:

19 Q. If you could please turn to Exhibit 21,
20 please.

21 A. Okay.

22 Q. It's an email dated November 26, 2019.
23 Did you send this email?

24 A. I don't believe so, no.

25 Q. Is there someone else at your pharmacy

1 who would send lab reports to TDOC?

2 MR. MITCHELL: Object to the form.

3 THE WITNESS: It would have been the
4 pharmacy -- previous pharmacy owner.

5 BY MS. NELSON-MAJOR:

6 Q. Could you please turn to Exhibit 22.

7 A. Okay.

8 Q. It's an email dated August 9th, 2019,
9 subject, "results." Did you send this email?

10 A. No.

11 Q. Do you see that it says: "Attached is
12 our in house sterility report?"

13 A. Yes, I see that.

14 Q. Does your pharmacy conduct sterility
15 testing in-house?

16 A. Yes.

17 Q. How do you make a decision about where
18 the sterility testing should be done?

19 A. We are allowed to perform in-house
20 sterility testing. I didn't -- I don't -- I didn't
21 make that determination on this midazolam and potassium
22 chloride, on if it was in-house or external. It was
23 just determined and told to me that it would be an
24 external test.

25 Q. So you don't recall ever running a

1 sterility test of TDOC's compounded preparations
2 in-house?

3 A. I do not.

4 Q. Could you please turn to Exhibit 23.
5 We've taken a look at this before.

6 A. Yes.

7 Q. It's an email dated August 8th, 2019.
8 Subject, "Suitability Test."

9 A. Yes.

10 Q. When you run a suitability test, what
11 kind of documentation do you create?

12 MR. MITCHELL: Objection.

13 THE WITNESS: We send API that
14 we're -- we're using, the concentration it's
15 supposed to be, the total volume in the vial, the
16 number of vials we'll typically be making, the
17 master formula, what our storage requirements are.
18 I believe that's all.

19 BY MS. NELSON-MAJOR:

20 Q. Where do you send that information?

21 A. That goes to the same third-party testing
22 that we use.

23 Q. And do you run a suitability test each
24 time you compound?

25 A. No, ma'am.

1 Q. Do you run it at just the initial
2 compounding stage?

3 A. Yes.

4 Q. And did you run a suitability test for
5 both midazolam and potassium chloride?

6 A. Yes.

7 MR. MITCHELL: Object to the form.

8 MS. NELSON-MAJOR: I'd request copies of
9 all of the suitability and methodology testing
10 completed related to the midazolam and potassium
11 chloride.

12 MR. MITCHELL: I thought that was already
13 requested. I mean, you might have it.

14 BY MS. NELSON-MAJOR:

15 Q. Okay. Could we turn to Exhibit 24. It's
16 an email dated August 8th, 2019; the subject, "kcl
17 protocol."

18 A. Yes.

19 Q. Did you write or receive any of these
20 emails?

21 A. I did not.

22 Q. Could you look at the bottom of the page.
23 It says: "I made edits to the instructions. Could you
24 have the pharmacist review and confirm that these are
25 good?"

1 Do you know --

2 A. Yes, I see it.

3 Q. Sorry. Do you know what instructions for
4 kcl protocol this email is referring to?

5 A. Yes.

6 Q. And what are they?

7 A. It's just the steps taken once they were
8 received and how to prepare the proper steps to remove
9 the medication from the vials to prepare to be used.

10 Q. And did you write those instructions?

11 A. I made edits, as he said, but I don't --
12 I don't recall that I specifically did each step in its
13 entirety.

14 Q. So your belief is that somebody else
15 wrote the first draft of those instructions?

16 A. Yes, I believe.

17 Q. Without naming names, do you know who
18 wrote -- wrote the first draft of those instructions?

19 A. I'm not certain who it was.

20 Q. Was it someone with your pharmacy?

21 A. It may have been the previous owner, but
22 I'm not positive.

23 Q. And were the edits made to this protocol
24 because the potassium chloride was falling out of
25 solution?

1 A. No.

2 Q. What edits were made then?

3 A. I believe it was just clarity in the
4 steps, just to make it make sense and understandable.

5 MS. NELSON-MAJOR: Mr. Mitchell, I
6 believe I've already requested the different
7 versions of the KCL protocol; but if I have not,
8 I'm requesting those now.

9 MR. MITCHELL: The versions of?

10 MS. NELSON-MAJOR: The KCL instructions
11 referenced in Exhibit 24.

12 MR. MITCHELL: Okay. Okay. Yeah, yeah,
13 yeah, yeah, yeah; I think actually that came up in
14 the Drug Procurer's deposition.

15 MS. NELSON-MAJOR: That's right.

16 I'm looking at my notes and wondering if
17 it's a good time to break, if everyone -- so is
18 that okay, for 10 minutes?

19 MR. MITCHELL: Good for us. Pharmacist,
20 that good with you?

21 THE WITNESS: Yeah, That's fine.

22 MS. NELSON-MAJOR: Come back at 2:00.

23 THE VIDEOGRAPHER: We're off the record.
24 The time is 1:49 p.m.

25 (Recess from 1:49 p.m. to 2:01 p.m.)

1 THE VIDEOGRAPHER: We're back on the
2 record. The time is 2:01 p.m.

3 BY MS. NELSON-MAJOR:

4 Q. Pharmacist, I think I asked you to pull
5 up Exhibit 25. We could start there.

6 A. Okay. I have it.

7 Q. And email dated July 31st, 2019.

8 A. Yes, I see it.

9 Q. Did you send or receive this email?

10 A. I did not.

11 Q. And can you please turn to Exhibit 26.

12 A. Okay.

13 Q. It's an email dated July 24th, 2019.

14 A. Yes, I see it.

15 Q. Did you send or receive this email?

16 A. No.

17 Q. Can you turn to Exhibit 28.

18 A. Okay.

19 Q. It's an email dated May 9th, 2019. Did
20 you send or receive this email?

21 A. No.

22 Q. Can you turn to Exhibit 29, please.

23 A. Okay.

24 Q. Did you send or receive this email?

25 A. No.

1 Q. Can you turn to Exhibit 30, please.

2 A. Okay.

3 Q. It's an email dated August 6th, 2018,
4 with the subject "USP 71." Do you know what USP 71 is?

5 A. That's a chapter within USP. I believe
6 that's on sterility.

7 Q. Did you write or send this email?

8 A. No.

9 Q. Can you turn to Exhibit 31, please.

10 A. Okay.

11 Q. An email dated July 12th, 2018. Did you
12 send or receive this email?

13 A. No.

14 Q. Can you turn to Exhibit 32, please.

15 A. Yes.

16 Q. It's an email dated November 14th, 2017.
17 Did you write or send this -- I'm sorry, did you write
18 or receive this email?

19 A. No.

20 Q. And lastly, can you turn to Exhibit 33.

21 A. Okay.

22 Q. It's an email dated July 17th, 2018. It
23 says: "Attached is a sample prescription for ordering
24 a compounded preparation." Did you send or receive
25 this email?

1 A. No.

2 Q. Do you know who created the sample
3 prescription for TDOC?

4 A. I don't remember.

5 Q. I want to turn to transferring the
6 compounded preparations to TDOC. How do you prepare
7 the compounded preparations of midazolam and potassium
8 chloride for shipment to TDOC?

9 A. They're within a styrofoam box that can
10 be cut for -- for keeping medications cold. The
11 medications themselves, dry ice. That is sealed and
12 then put in -- that is sealed with a temperature -- I
13 don't know the correct terminology, but a gauge to
14 ensure that the recipient can acknowledge that the
15 medication itself was received in the proper
16 temperatures. It's just a blue dot.

17 And that is closed with a styrofoam lid,
18 put inside a box, and it's taped before shipment.

19 Q. And how does the blue dot work? What is
20 the blue dot?

21 A. It's essentially like just a color
22 representation to maintain -- for you to know whether
23 the temperature is in the allotted range. And if it's
24 below that, then I believe it fades to I think it's a
25 white color. I don't remember the exact color.

1 It changes color depending on the range.

2 Q. Have you ever discussed how that dot
3 functions with anyone at TDOC?

4 A. No.

5 Q. And what is the allotted temperature, I
6 think is the phrase you used?

7 A. It is one to maintain that freezer
8 temperature of negative 10 to negative 25 degrees
9 Celsius.

10 Q. Do you ship all three of the drugs on dry
11 ice?

12 A. Potassium chloride and the midazolam.

13 Q. Do you ship the vecuronium bromide
14 separately?

15 A. Yes, that is not in ice.

16 Q. How is that shipped?

17 A. Just wrapped in bubble wrap in a box.

18 Q. And does that box have any temperature
19 controls?

20 A. No.

21 Q. Without disclosing names, who is
22 responsible for receiving the drugs at TDOC?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: The drug procurer.

25 BY MS. NELSON-MAJOR:

1 Q. And again, without disclosing names, who
2 do you believe is responsible for preparing the drugs
3 for use in execution?

4 MR. MITCHELL: Same objection.

5 THE WITNESS: I'm not aware of who
6 prepares them.

7 BY MS. NELSON-MAJOR:

8 Q. Are you aware of what kind of training
9 and expertise that person has?

10 A. I am not.

11 Q. Have you ever spoken to the person who is
12 responsible for preparing the drugs for use in
13 executions?

14 MR. MITCHELL: Object to the form.

15 THE WITNESS: I have not.

16 BY MS. NELSON-MAJOR:

17 Q. Do you know whether anyone else at your
18 pharmacy has had a conversation with someone -- with a
19 person who's responsible for preparing drugs?

20 A. No.

21 Q. What sort of expertise or training should
22 someone have regarding the preparing of drugs?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: You don't have to be
25 trained in the sense where you have a license to

1 do it, but who -- whoever is doing it should be
2 able to determine that they have the basic
3 understanding to be able to do it properly. So
4 taught by somebody who does know or is trained.

5 BY MS. NELSON-MAJOR:

6 Q. How soon after compounding the drugs do
7 you ship them to TDOC?

8 A. Once we receive the sterility -- all the
9 testing from the third party that everything has
10 passed, then we send it maybe within the next 24 to 48
11 hours after that.

12 Q. So you wait until all the results come
13 back before you ship the drugs to TDOC?

14 A. Yes.

15 Q. I'm going to ask you to turn to Exhibit
16 49 again.

17 A. I'm sorry, 49?

18 Q. Four-nine.

19 A. Okay.

20 Q. And turn to Page 5 again.

21 A. Okay.

22 Q. And as we previously discussed, this
23 document lists the dates on which potassium chloride
24 and midazolam were compounded, as well as the dates on
25 which you shipped compounded midazolam and potassium

1 chloride to TDOC.

2 I believe that you testified that these
3 dates look accurate to you; is that right?

4 A. Yes.

5 Q. Do you keep records of the dates on which
6 you compounded drugs for TDOC?

7 A. Yes.

8 Q. Is that part of the master formula log?

9 A. Yes.

10 Q. Okay. And it's also part of the internal
11 database you referenced before, right?

12 A. Yes.

13 Q. Do either of those things also record the
14 dates on which you shipped the drugs to TDOC?

15 A. No.

16 Q. Do you track elsewhere the dates on which
17 you sent drugs to TDOC?

18 A. No.

19 Q. So under subheading (a), again, it
20 states: "The compounding of chemicals intended to use
21 in executions."

22 And according to this document, the first
23 time you compounded midazolam for TDOC was July 20th,
24 2018. Is that right?

25 MR. MITCHELL: Form.

1 THE WITNESS: Yes.

2 BY MS. NELSON-MAJOR:

3 Q. And lower down on the page, under
4 subheading (b), it provides a number of shipment dates.
5 Is the first time on which you shipped drugs to TDOC
6 July 26th, 2018?

7 A. I don't remember.

8 Q. Would a delay of six days be unusual
9 between compounding and shipping the drugs?

10 MR. MITCHELL: Object to the form.

11 THE WITNESS: No.

12 BY MS. NELSON-MAJOR:

13 Q. Were all of the tests completed within
14 those six days?

15 MR. MITCHELL: Object to the form.

16 THE WITNESS: It wouldn't have been, no.

17 BY MS. NELSON-MAJOR:

18 Q. Is the turnaround time on the tests
19 longer than six days?

20 MR. MITCHELL: Object to the form.

21 THE WITNESS: I believe so, yes.

22 BY MS. NELSON-MAJOR:

23 Q. Could you provide a ballpark on how long
24 it takes that third party to perform and return results
25 to you?

1 MR. MITCHELL: Same objection.

2 THE WITNESS: I would say about seven
3 days.

4 BY MS. NELSON-MAJOR:

5 Q. So if the testing company was unable to
6 complete the testing in six days, as you testified, why
7 did you ship drugs to TDOC?

8 MR. MITCHELL: Object to the form.

9 THE WITNESS: I don't remember.

10 BY MS. NELSON-MAJOR:

11 Q. So after that first compounding of
12 midazolam, it looks like you compounded midazolam on
13 September 21st, October 25th, and November 16th of
14 2018. Does that look right to you?

15 MR. MITCHELL: Object to form.

16 THE WITNESS: I -- I really don't
17 remember, but it could be right.

18 BY MS. NELSON-MAJOR:

19 Q. If you compounded midazolam each time, is
20 there a reason why you wouldn't ship each compounded
21 batch of midazolam to TDOC after completing it?

22 MR. MITCHELL: Same objection.

23 THE WITNESS: Yes. If we compounded it
24 and then in the end they weren't going to use it,
25 then we still would have made it in case. But

1 then maybe they told us they weren't going to use
2 it after all, so we wouldn't have sent it. We
3 still had it.

4 BY MS. NELSON-MAJOR:

5 Q. Has TDOC canceled orders for compounded
6 drugs before?

7 MR. MITCHELL: Objection.

8 THE WITNESS: Yes.

9 BY MS. NELSON-MAJOR:

10 Q. And who conveys to you that the order's
11 being canceled, without naming names?

12 A. The drug procurer.

13 Q. And during those conversations with the
14 drug procurer, does the drug procurer tell you why the
15 order's being canceled?

16 MR. MITCHELL: Objection to form.

17 THE WITNESS: I don't believe so.

18 BY MS. NELSON-MAJOR:

19 Q. What happens to the drugs that are
20 compounded for an order that subsequently canceled?

21 A. They're disposed of properly.

22 Q. For each time you compounded midazolam,
23 did you have a prescription to do so?

24 A. Apart from when we did the initial
25 testing -- which was never sent, just sent for testing.

1 But yes.

2 Q. And the same for potassium chloride?

3 A. Yes.

4 Q. Has it ever taken significantly longer
5 than seven days to get the lab reports back?

6 MR. MITCHELL: Object to form.

7 THE WITNESS: I would say that's the
8 normal range; seven -- seven days, I believe.

9 BY MS. NELSON-MAJOR:

10 Q. This document lists July 14th, as the --
11 2020, as the last day on which you compounded midazolam
12 and potassium chloride. Do you recall whether you more
13 recently compounded either drug for TDOC?

14 A. I don't remember the most current one we
15 did.

16 Q. Do you know how the drugs are stored at
17 TDOC once received?

18 A. I do -- I do not.

19 Q. Have you ever discussed with anyone at
20 TDOC the temperature at which compounded drugs should
21 be stored?

22 A. No.

23 Q. Is a commercially available mini-fridge
24 an acceptable place to store compounded drugs?

25 MR. MITCHELL: Object to the form.

1 THE WITNESS: As long as the temperature
2 requirements are met, then yes.

3 BY MS. NELSON-MAJOR:

4 Q. Would it be an appropriate place to store
5 compounded drugs if it doesn't have a temperature gauge
6 on the outside of the door?

7 MR. MITCHELL: Same objection.

8 THE WITNESS: Yes.

9 BY MS. NELSON-MAJOR:

10 Q. Are you aware of the temperature ranges
11 that a commercially available mini-fridge maintains in
12 the freezer compartment?

13 A. No.

14 Q. What about the refrigerator compartment?
15 Are you aware of the ranges your standard mini-fridge
16 can maintain there?

17 A. I do not.

18 Q. Can you please pull up Exhibit No. 2.

19 A. Okay. I have it.

20 Q. Do you recognize this document?

21 A. I do.

22 Q. What is it?

23 A. These are the instructions of preparing
24 the midazolam --

25 Q. Did you --

1 A. -- from what we compounded.

2 Q. I'm sorry to cut you off, Pharmacist.
3 Did you write -- did you write this
4 document?

5 A. I assisted.

6 Q. And without naming names, who did you
7 assist in writing this document?

8 A. The past pharmacy owner.

9 Q. And when you say "assisted," what does
10 that mean?

11 A. I don't remember me typing everything out
12 specifically. I know I made edits and clarified, made
13 sure that the steps were in correct order.

14 Q. Was it unusual for the pharmacy --
15 previous pharmacy owner to be involved in the drafting
16 of instructions for prepared compounded drugs?

17 MR. MITCHELL: Object to the form.

18 THE WITNESS: Yes.

19 BY MS. NELSON-MAJOR:

20 Q. Why was it unusual?

21 MR. MITCHELL: Same objection.

22 THE WITNESS: It didn't take the normal
23 course with other accounts that we had.

24 BY MS. NELSON-MAJOR:

25 Q. Is this the only time the pharmacy owner

1 has assisted in the preparation of instructions for
2 compounded drugs?

3 MR. MITCHELL: Same objection.

4 THE WITNESS: Yes.

5 BY MS. NELSON-MAJOR:

6 Q. Does the pharmacy owner have any training
7 in the preparation of compounded drugs?

8 MR. MITCHELL: Form.

9 THE WITNESS: I'm not aware.

10 BY MS. NELSON-MAJOR:

11 Q. Did the pharmacy owner convey to you
12 whether TDOC asked you to prepare these instructions?

13 A. Yes.

14 Q. And what did the pharmacy owner say in
15 that regard?

16 A. He just said that he wants -- we needed
17 to prepare this to give accurate step-by-step
18 instructions so they could understand and make it as
19 easily readable and understandable as possible.

20 Q. Is it unusual to type up instructions of
21 this kind to accompany preparations that you compound
22 for other customers?

23 MR. MITCHELL: Form objection.

24 THE WITNESS: No.

25 BY MS. NELSON-MAJOR:

1 Q. Has this document been edited or changed
2 from the original version at all?

3 MR. MITCHELL: Same objection.

4 THE WITNESS: I have not made any changes
5 to this original, no.

6 BY MS. NELSON-MAJOR:

7 Q. Do you recall when these original
8 instructions were finalized?

9 A. Not the exact date, but it would have
10 been in 2018.

11 Q. Did you provide this document to TDOC?

12 A. No.

13 Q. Did the pharmacy owner provide it to
14 TDOC, if you're aware?

15 A. I believe so, yes.

16 Q. And each time you send compounded drugs
17 to TDOC, do you provide these instructions with the
18 shipment?

19 A. I do not.

20 Q. Are these instructions the same
21 instructions that you provide printed on the vials?

22 A. No.

23 Q. How are they different?

24 MR. MITCHELL: Object to form.

25 THE WITNESS: On the vials, I believe

1 they just say "Inject as directed," or -- yeah,
2 "Inject as directed."

3 BY MS. NELSON-MAJOR:

4 Q. Do you see the first paragraph states:
5 "USP Chapter 797 sets the following BUDs on
6 high-risk compounded preparations: 24
7 hours at room temperature, three days at
8 cold temperature, (refrigerated), and 45
9 days frozen."
10 What does "Cold temperature (refrigerated)"
11 mean?

12 A. That it's good for 45 days in a
13 refrigerator.

14 Q. Do you know what temperature range
15 corresponds to cold temperature?

16 A. 2 to 8 degrees Celsius.

17 Q. Did you ever convey that information to
18 anyone at TDOC?

19 A. I have not.

20 Q. What does "frozen" mean, as far as
21 temperature?

22 A. Negative 25 to negative 10 degrees
23 Celsius.

24 Q. Have you ever conveyed that information
25 to anyone at TDOC?

1 A. I have not.

2 Q. And then the next sentence states:
3 "Once thawed at room temperature, the
4 preparation must be used within 24 hours
5 and cannot be refrozen to extend that time.
6 If thawed in refrigerator, it must be used
7 in three days."

8 What does "thawed" mean?

9 A. To allow the medication from its frozen
10 state into a liquefied state.

11 Q. What happens if the refrigerator exceeds
12 the cold temperature range that you just provided?

13 MR. MITCHELL: Object to the form.

14 THE WITNESS: Then the medication, if
15 it's without -- if it's above the necessary
16 temperature requirements, then it should be used
17 within those 24 hours.

18 BY MS. NELSON-MAJOR:

19 Q. What would happen to the medication if it
20 exceeded the cold temperature range for more than three
21 days in the refrigerator?

22 MR. MITCHELL: Form objection.

23 THE WITNESS: It could lose its
24 sterility, it could lose its potency.

25 BY MS. NELSON-MAJOR:

1 Q. And at that point, what should happen to
2 the medication?

3 A. It should not be used and disposed of
4 properly.

5 Q. What if the previously frozen medication
6 remains in the refrigerator for more than 24 hours?
7 What could happen then?

8 MR. MITCHELL: Form objection.

9 THE WITNESS: It's okay, as long as it's
10 in there for no more than three days. So 24 hours
11 is within that allotted time period.

12 BY MS. NELSON-MAJOR:

13 Q. What if the medication is stored in the
14 refrigerator for more than 24 hours at a temperature
15 above the cold temperature range you provided?

16 MR. MITCHELL: Form objection.

17 THE WITNESS: If it's not used within 24
18 hours of the temperature that is suggested by USP
19 797, then it's not supposed to be used.

20 BY MS. NELSON-MAJOR:

21 Q. Did you ever discuss with anyone at TDOC
22 what they should do with these drugs under any of these
23 scenarios we just discussed?

24 A. No.

25 Q. Do you see underneath that introductory

1 paragraph, it states "Items you need?"

2 A. Yes.

3 Q. It says "gloves, alcohol swabs, bags of
4 saline, and syringes?"

5 A. Yes.

6 Q. Do you provide TDOC with those items?

7 A. I do not.

8 Q. And it specifies that the syringes should
9 be 50 ml-per-cc syringes; is that right?

10 A. Yes, I see that.

11 Q. Why do you provide a particular syringe
12 size in these instructions?

13 A. Depending on the amount of liquid that
14 they're drawing up, it's important to know the size of
15 syringe you need. So that would have been why we put
16 the size.

17 Q. What would happen if a larger syringe
18 size is used in preparing the drugs?

19 MR. MITCHELL: Object to the form.

20 THE WITNESS: You can use a larger
21 syringe size, as long as you're able to see
22 accurately the quantity that you're drawing up.

23 BY MS. NELSON-MAJOR:

24 Q. In order to accurately draw up the
25 quantity, would you need to then adjust the

1 instructions that you provided?

2 MR. MITCHELL: Object to the form.

3 THE WITNESS: I'm sorry; if their
4 quantity that they're measuring changes, would I
5 need to change the 50 ml/cc?

6 BY MS. NELSON-MAJOR:

7 Q. For example, if a 60 ml/cc syringe is
8 used?

9 A. No, I don't believe it would be necessary
10 to change the directions.

11 Q. So under "Preparation," Step 1 states:
12 "Remove four vials of midazolam from the freezer and
13 place in the refrigerator 24 hours prior to use as to
14 allow it to thaw."

15 Why 24 hours before use?

16 A. Just to ensure that it thaws out properly
17 and just to give enough time.

18 Q. Is 24 hours a standard instruction that
19 you give for the thawing of compounded preparations?

20 A. Yes. It's -- it's a standard that I have
21 used for my patients, yes.

22 Q. Step 6 directs the person preparing the
23 syringes to follow aseptic technique. What is aseptic
24 technique?

25 A. Aseptic technique is just trying to

1 maintain the integrity of the product. And then the
2 ways to maintain that are the details that are listed
3 after that.

4 Q. If you turn to the next page, I'd like
5 you to take a look at Step 10, which states:

6 "These instructions list drawing the
7 midazolam first followed by saline but the
8 order can be reversed and the saline may be
9 drawn first followed by the midazolam."

10 Why did you include this step?

11 MR. MITCHELL: Object to the form.

12 THE WITNESS: Just so it's known that the
13 order doesn't change the integrity of the
14 medication itself; that if -- if either order is
15 used, it's okay.

16 BY MS. NELSON-MAJOR:

17 Q. Setting aside the note about the order of
18 the midazolam versus saline, do these instructions
19 require someone to complete Steps 1 to 18, one after
20 the other?

21 A. Sorry. If I could just look at it a
22 minute, I'll answer you.

23 MR. MITCHELL: Object to the form.

24 (Pause.)

25 THE WITNESS: Yes. It would do it each

1 time, each step individually, and then restart.

2 BY MS. NELSON-MAJOR:

3 Q. Would it be a deviation from your
4 instructions to draw up the saline and then wait an
5 hour or more to draw up the midazolam?

6 MR. MITCHELL: Object to the form.

7 THE WITNESS: No, that wouldn't be a
8 problem.

9 BY MS. NELSON-MAJOR:

10 Q. Would that be a breach of aseptic
11 technique?

12 A. No.

13 Q. Steps 11 to 16 direct the withdrawing of
14 5 milliliters of midazolam and 48 milliliters of
15 saline. Why saline?

16 A. Saline? Because of the quantity being
17 used, the normal saline is the correct pH that can be
18 infused to a patient. So we already know that they
19 won't have a reaction if that's mixed with midazolam,
20 so we wouldn't be running any risks.

21 Q. Could you use bacteriostatic water
22 instead of the saline?

23 A. You could use bacteriostatic water,
24 depending on the quality and the quantity of the
25 medication you're mixing it with.

1 Q. So this particular quantity of medication
2 and quantity of diluent that you're mixing, could you
3 use bacteriostatic water?

4 A. For this quantity, I would just use
5 normal saline.

6 Q. Why does the midazolam need to be diluted
7 before injection?

8 A. Just to follow their protocol of the
9 amounts that they wanted to. That's how it was
10 adapted.

11 Q. And you say to follow the amounts in
12 their protocol; are you talking about the overall
13 volume of the syringe, or the concentration or the
14 quantity of midazolam?

15 A. All that you said.

16 Q. Why didn't you prepare the midazolam in
17 the concentration, quantity, and volume as contemplated
18 by the protocol?

19 MR. MITCHELL: Object to the form.

20 THE WITNESS: I prepared it as requested
21 by my previous owner.

22 BY MS. NELSON-MAJOR:

23 Q. So the previous owner directed you to
24 prepare the midazolam in a quantity, concentration, and
25 volume that would require dilution?

1 MR. MITCHELL: Same objection.

2 THE WITNESS: Yes.

3 BY MS. NELSON-MAJOR:

4 Q. Did the pharmacy owner explain to you why
5 he was requesting that you prepare the midazolam in
6 that fashion?

7 A. No.

8 Q. Step 15 requires an inspection of the
9 syringe "to ensure you see no particulates or
10 discoloring" and further states it "should be clear
11 liquid and without debris."

12 What happens if particulates are present?

13 A. Then it shouldn't be used.

14 Q. Did you convey that information to anyone
15 at TDOC?

16 A. No.

17 Q. What does discoloration indicate?

18 MR. MITCHELL: Object to the form.

19 THE WITNESS: It could indicate anything;
20 the medication, the API, being nonsterile. Or
21 just anything that's not clear, you just shouldn't
22 use it.

23 BY MS. NELSON-MAJOR:

24 Q. Did you convey that to TDOC?

25 A. No.

1 Q. Step 16 states: "Do not inject the
2 midazolam into the bag of normal saline." Why did you
3 include that step?

4 (Pause.)

5 THE WITNESS: Because they need to take
6 out a volume. Sorry, let me just double-check
7 first before I say it.

8 Because they're extracting the normal
9 saline from that 50-cc bag that they need to make
10 it the correct concentration that they need.

11 BY MS. NELSON-MAJOR:

12 Q. If in preparing the syringes TDOC draws
13 out too much saline, should that also not be injected
14 into the bag?

15 MR. MITCHELL: Object to the form.

16 THE WITNESS: They should just be drawing
17 out the quantity needed to make it a proper
18 concentration.

19 BY MS. NELSON-MAJOR:

20 Q. What if they draw out too much while
21 trying to do that?

22 A. Then it would change the concentration of
23 the solution that is labeled -- as it is labeled.

24 Q. If they noticed they've drawn out too
25 much saline, would it be a breach of aseptic technique

1 to inject the extra saline back into the saline bag?

2 MR. MITCHELL: Object to the form.

3 THE WITNESS: It would not.

4 BY MS. NELSON-MAJOR:

5 Q. Could doing so affect the concentration
6 of midazolam in the syringe?

7 MR. MITCHELL: Same objection.

8 THE WITNESS: If you're....

9 (Pause.)

10 MR. MITCHELL: Pharmacist, are you
11 pausing or are you answering? I wasn't hearing
12 anything, at least on my end.

13 THE WITNESS: No, I'm just reading. I'm
14 sorry.

15 They're using the same syringe that they
16 already have the midazolam to draw out the normal
17 saline. And then the concentration, or the amount
18 that was pulled out of -- pulled into the syringe
19 was too much, then no, they wouldn't be able to --
20 to push out the excess because then you'd be
21 pushing out midazolam, as well.

22 BY MS. NELSON-MAJOR:

23 Q. Do the BUD times that you provided in
24 that intro paragraph change once the midazolam has been
25 mixed with saline?

1 A. No, it would stay the same.

2 Q. Is there any reason that the midazolam
3 mixed with saline would need to be administered within
4 an hour of mixing?

5 MR. MITCHELL: Object to the form.

6 THE WITNESS: Depending on where it's
7 prepared. If according to USP 797 it's considered
8 to be immediate use, then yes, you would do it in
9 an hour.

10 BY MS. NELSON-MAJOR:

11 Q. According to your instructions in your
12 preparation requirements that you followed, is there
13 any reason why TDOC would need to administer the
14 midazolam that you compounded within one hour of mixing
15 it with saline?

16 MR. MITCHELL: Object to the form.

17 THE WITNESS: Can you say that again?

18 BY MS. NELSON-MAJOR:

19 Q. Is this any reason that TDOC has to
20 administer the midazolam within one hour of mixing it
21 with saline?

22 MR. MITCHELL: Same objection.

23 THE WITNESS: If they're just doing it
24 like at bedside or in an open area, then it would
25 be within an hour.

1 BY MS. NELSON-MAJOR:

2 Q. Is that true of all the drugs?

3 A. Yes. Any -- any medication that is done
4 in a normal room is to be used with an hour window of
5 being compounded.

6 Q. So the potassium chloride, after being
7 drawn up in a syringe, must be used within one hour as
8 well?

9 MR. MITCHELL: Object to the form.

10 THE WITNESS: Yes.

11 BY MS. NELSON-MAJOR:

12 Q. What happens if one of those compounded
13 drugs is administered more than an hour after it is
14 drawn up in the syringe?

15 MR. MITCHELL: Same objection.

16 THE WITNESS: After an hour, you can't
17 guarantee by the guidelines that you are still
18 maintaining sterility and potency.

19 BY MS. NELSON-MAJOR:

20 Q. Can you please turn to Exhibit 4.

21 A. Okay.

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. It's the potassium chloride preparation.

1 Q. Did you write this document?

2 A. I assisted in the same way as the
3 midazolam.

4 Q. And by "the same way," do you mean that
5 the pharmacy owner drafted the document and then sought
6 your input?

7 A. Yes.

8 Q. Did you make edits to this document?

9 A. I know I reviewed it, but I don't
10 remember what I edited.

11 Q. Did you provide this document to TDOC?

12 A. I did not.

13 Q. Are you aware of whether the pharmacy
14 owner provided this document to TDOC?

15 A. He did.

16 Q. And if you're aware, do you know how many
17 times he provided this document to TDOC?

18 A. I am not.

19 Q. Do you send this document with compounded
20 preparations time -- preparations each time you send it
21 to TDOC?

22 A. No.

23 Q. Are these instructions different in any
24 way than the instructions you provide on the vials of
25 compounded potassium chloride?

1 MR. MITCHELL: Object to the form.

2 THE WITNESS: No.

3 BY MS. NELSON-MAJOR:

4 Q. Did these instructions provide
5 information about the beyond use date for potassium
6 chloride?

7 A. No.

8 Q. Is there a reason you provided beyond use
9 date information on the midazolam instructions but not
10 the potassium chloride instructions?

11 A. No.

12 MR. MITCHELL: Object to the form.

13 BY MS. NELSON-MAJOR:

14 Q. The potassium chloride instructions don't
15 contain any reference to potassium chloride being a
16 high-risk preparation, unlike the midazolam
17 instructions; is that right?

18 MR. MITCHELL: Object to the form.

19 THE WITNESS: I don't see that on here,
20 no.

21 BY MS. NELSON-MAJOR:

22 Q. Did you discuss with the TDOC the beyond
23 use date of potassium chloride, outside of these
24 instructions?

25 A. Yes.

1 Q. And without naming names, who were those
2 conversations with?

3 A. My discussion directly was with the
4 pharmacy -- previous pharmacy owner.

5 Q. Can you describe that conversation?

6 A. Yes. We just discussed that the
7 potassium chloride would have the same storage
8 requirements as the midazolam, as it was also a
9 high-risk preparation.

10 Q. Was anyone from TDOC present for that
11 conversation?

12 A. No.

13 Q. Did you inform anyone at TDOC that
14 potassium chloride is a high-risk preparation?

15 A. No.

16 Q. Is the midazolam un- -- more unstable
17 than the potassium chloride?

18 MR. MITCHELL: Object to the form.

19 THE WITNESS: No.

20 BY MS. NELSON-MAJOR:

21 Q. Do you see under "Items you will need" it
22 says two vials of potassium chloride, gloves, alcohol
23 swabs, and syringes?

24 A. Yes.

25 Q. What size of syringe does this specify?

1 A. 60 ml.

2 Q. And why have you used a 60-ml syringe in
3 these instructions?

4 A. Because the quantity of the potassium
5 chloride that they're extracting is 60 ml's.

6 Q. If TDOC used a 50-milli- -- milliliter
7 syringe, would that impact the volume of potassium
8 chloride delivered to an inmate?

9 MR. MITCHELL: Objection.

10 THE WITNESS: Yes. They wouldn't be able
11 to measure and know.

12 BY MS. NELSON-MAJOR:

13 Q. So the midazolam and potassium chloride
14 instructions require different sizes of syringes,
15 right?

16 A. Based on these instructions, yes.

17 Q. According to these instructions, is the
18 potassium chloride mixed with anything to dilute it?

19 A. It is not.

20 Q. So unlike the midazolam, the potassium
21 chloride is provided to TDOC at the concentration at
22 which it is to be administered?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: Yes.

25 BY MS. NELSON-MAJOR:

1 Q. Why the difference between the two
2 preparations?

3 A. We weren't able to make the potassium
4 chloride at the original 4 mEq per ml, as we discussed
5 previously, and then it was changed to this 2 mEq per
6 ml.

7 Q. I understand that. At the adjusted
8 concentration, however, no additional saline or
9 bacteriostatic water is directed to be diluted with
10 potassium chloride; is that right?

11 A. Yes.

12 Q. Did the pharmacy owner direct you to
13 prepare that initial batch of potassium chloride at
14 that concentration and volume?

15 MR. MITCHELL: Object to the form.

16 THE WITNESS: Yes.

17 BY MS. NELSON-MAJOR:

18 Q. Does the vecuronium bromide that you
19 provide to TDOC for use in executions come in powder or
20 liquid form?

21 A. I don't remember.

22 Q. If you provided vecuronium bromide in a
23 liquid form, would that be a compounded drug or a
24 commercially manufactured drug?

25 A. It could be either.

1 Q. If you're dealing with vecuronium bromide
2 in powder form, what needs to happen to it before it is
3 administered to a patient?

4 MR. MITCHELL: Object to the form.

5 THE WITNESS: It would be diluted.

6 BY MS. NELSON-MAJOR:

7 Q. And what should it be diluted with?

8 A. Whatever is indicated by the
9 manufacturer; most likely, sterile water or normal
10 saline.

11 Q. But not bacteriostatic water?

12 A. It could be, but I'm not aware.

13 Q. Do you need medical training to
14 reconstitute a drug from powder form?

15 MR. MITCHELL: Object to the form.

16 THE WITNESS: No.

17 BY MS. NELSON-MAJOR:

18 Q. So reconstituting a powdered drug into a
19 solution is not the practice of pharmacy?

20 MR. MITCHELL: Same objection.

21 THE WITNESS: No.

22 BY MS. NELSON-MAJOR:

23 Q. Did you provide written instructions to
24 TDOC for storing and preparing the vecuronium bromide?

25 A. No.

1 Q. Why did you provide written instructions
2 for potassium chloride and midazolam but not the
3 vecuronium bromide?

4 MR. MITCHELL: Same objection.

5 THE WITNESS: We are compounding the
6 potassium chloride and the midazolam, so we
7 provided instructions.

8 BY MS. NELSON-MAJOR:

9 Q. Would the commercially manufactured
10 vecuronium bromide come with instructions?

11 A. Yes.

12 Q. And where do those instructions come
13 from?

14 A. They are either on the vial or in the
15 package insert in the packaging that it comes in.

16 MS. NELSON-MAJOR: I'd request copies of
17 the instructions contained on the vials of
18 vecuronium bromide or in the package insert for
19 the vecuronium bromide that the pharmacy has
20 provided to TDOC.

21 BY MS. NELSON-MAJOR:

22 Q. Did you ever --

23 MS. NELSON-MAJOR: I'm sorry, Rob?

24 MR. MITCHELL: I said I would look into
25 that, and I was on mute and I unmuted. Sorry.

1 BY MS. NELSON-MAJOR:

2 Q. Did you ever discuss how the vecuronium
3 bromide should be stored and prepared with anyone at
4 TDOC?

5 A. No.

6 Q. Did you ever have a discussion related to
7 any of the other two drugs with anyone at TDOC?

8 I'm sorry, let me restate that.

9 Did you ever have discussions related to
10 the preparation of the other two drugs with anyone at
11 TDOC?

12 A. No.

13 Q. Have you ever spoken with anyone directly
14 who's involved in carrying out the executions?

15 MR. MITCHELL: Object to the form.

16 THE WITNESS: No.

17 BY MS. NELSON-MAJOR:

18 Q. So you've never spoken to the EMTs who
19 are involved in the executions?

20 A. No.

21 Q. Or members of the IV team?

22 A. No.

23 Q. Or the executioner?

24 A. No.

25 Q. Or the physician?

1 A. No.

2 Q. Please turn to Exhibit 1.

3 A. Okay.

4 Q. And I'd like you to turn to Page 39.

5 A. Okay.

6 Q. And you previously testified that you
7 were somewhat involved in the drafting of this page of
8 the protocol. Can you look at the subheading (c) at
9 the very bottom that says "Vecuronium Bromide?"

10 A. Yes.

11 Q. Could you take a look at this paragraph
12 and let me know if you recall whether or not you
13 drafted this particular portion of Page 39?

14 A. No, I don't recall.

15 Q. Do you see that the first sentence
16 directs that the vecuronium should be reconstituted
17 with bacteriostatic water?

18 A. Yes.

19 Q. In the event that some or all of the
20 prepared syringes are not administered, what should
21 happen to them?

22 MR. MITCHELL: Object to the form.

23 THE WITNESS: I'm sorry, are you saying
24 all the midazolam, saline, vecuronium bromide, the
25 potassium chloride? For everything in total?

1 BY MS. NELSON-MAJOR:

2 Q. We can take each one, one by one, if your
3 answer changes.

4 What happens -- what should happen to any
5 midazolam syringes that are not administered during an
6 execution?

7 MR. MITCHELL: Object to the form.

8 THE WITNESS: They should be disposed of
9 properly. That would be true for anything that's
10 unused.

11 BY MS. NELSON-MAJOR:

12 Q. Can the prepared syringes be used in an
13 execution on a different date?

14 A. They should not.

15 Q. Could unopened vials, meaning that they
16 weren't drawn up into the syringe, be used in a
17 subsequent execution?

18 A. If they were vials that weren't outside
19 the temperature ranges, as we discussed, and they were
20 still in the freezer. As long as they're before the
21 BUD, then yes.

22 Q. And would your answers to those questions
23 be the same if we were talking about potassium
24 chloride, as well?

25 A. Yes.

1 Q. How should vials that are beyond their
2 use date be disposed of?

3 A. There are containers that are used that
4 are proper waste containers for medication that can be
5 disposed of.

6 Q. Could you turn to Exhibit 5.

7 A. Okay. I have it.

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. This is a report ran from our database on
12 the lot numbers of the midazolam and the potassium
13 chloride made by our pharmacy.

14 Q. And do you track every drug that you
15 compound for customers in this database?

16 A. Yes.

17 Q. Both compounded and commercially
18 available drugs, as well?

19 A. No.

20 Q. So is this database only used to track
21 compounded preparations?

22 A. Yes.

23 Q. Did you provide this log to the TDOC at
24 some point?

25 A. I do remember making this log. I just

1 don't know who I gave it to.

2 Q. Does the pharmacist who prepares the
3 drugs enter the dates into this database?

4 MR. MITCHELL: Objection.

5 THE WITNESS: No, they autopopulate.

6 BY MS. NELSON-MAJOR:

7 Q. Where do they autopopulate from?

8 A. When you're creating the master log for
9 that, whatever day you're making it, that "Date made"
10 will autopopulate.

11 Q. Does the "Discard after date" also
12 autopopulate?

13 A. It defaults to this one date because it's
14 assuming room temperature. But in the master formula,
15 it can tell you the refrigerated dates and freezer
16 dates, based on USP 797.

17 Q. So I just want to make sure I'm clear on
18 that. The "Discard after date" column you're saying is
19 just one day autopopulated, post date made; is that
20 right?

21 A. Yes.

22 Q. Could you look at the last entry for me:
23 "Date made, July 14th, 2020."

24 A. Yes, I see.

25 Q. And then what's the discard date for that

1 potassium -- I'm sorry, that midazolam?

2 A. On here, it says August 14th, 2020.

3 Q. Is there a reason why that one day post
4 date made didn't autopopulate here?

5 A. No, there's not a reason for it.

6 Q. And then if you look at the entry above
7 that for midazolam made on January 1st, 2020.

8 A. Yes, I see that.

9 Q. What's the discard date for that?

10 A. It says January 17th.

11 Q. Is there a reason why that's not one day
12 post the date made date?

13 A. No.

14 Q. So looking through this sheet, can you
15 point me to a date on which you compounded midazolam
16 for which the discard date is one day post the date
17 made?

18 (Pause.)

19 THE WITNESS: No, I don't see it on here
20 like that.

21 BY MS. NELSON-MAJOR:

22 Q. What would explain -- do you have any
23 idea -- I can rephrase that.

24 Do you have any idea why the discard dates
25 are different than your explanation for how they're

1 autopopulated?

2 A. No.

3 MR. MITCHELL: Object to the form.

4 THE WITNESS: No.

5 BY MS. NELSON-MAJOR:

6 Q. Can we look at the column that's titled
7 "QUTY Made?" I'm assuming that means "quantity made,"
8 right?

9 A. Yes.

10 Q. Do you enter the data in that column?

11 A. No.

12 Q. Where does that data come from?

13 A. From the formula of the quantity that we
14 made.

15 Q. And does that come from the master
16 formula log?

17 A. Yes.

18 Q. So the quantity made, what does that
19 correspond to?

20 MR. MITCHELL: Objection.

21 THE WITNESS: The quantity in total that
22 was made for that lot.

23 BY MS. NELSON-MAJOR:

24 Q. So, for example, on May 8th, 2018, the
25 first entry, you made 90 ml's of midazolam?

1 A. Yes.

2 Q. And then going down that column, I see
3 55, 60, 30, 60, 60, 55, 60, 85, 85, 85, 85.

4 Do you know why different quantities were
5 made on different dates?

6 A. Depending on the quantity requested on
7 the prescription and the quantity requested by the lab
8 is how the total quantity made is determined.

9 Q. Has the amount requested by the lab
10 varied over time with respect to the midazolam?

11 A. In general, yes. Not just to midazolam.

12 Q. Do you know why it has varied over time?

13 A. Just requirements. And I just make the
14 quantity based on how much extra they tell me I need to
15 make or send in to them.

16 Q. How do you use these records at work?

17 MR. MITCHELL: Objection.

18 THE WITNESS: This record, I don't
19 generally -- I don't usually make this report.

20 BY MS. NELSON-MAJOR:

21 Q. What's the purpose of recording the date
22 made in this database?

23 A. The date made is just to know when it was
24 made, and then we can base -- we know the lot number
25 off of that. And then also the BUD, depending on that

1 date made.

2 Q. Do you provide the information contained
3 in this database to entities outside of your pharmacy,
4 without naming names?

5 MR. MITCHELL: Object to the form.

6 THE WITNESS: No, I don't believe that I
7 have.

8 BY MS. NELSON-MAJOR:

9 Q. Do you ever rely on the discard after
10 date in making recommendations to customers about the
11 BUD?

12 A. No, I don't.

13 Q. Has your pharmacy ever been issued a Form
14 FDA 483?

15 MR. MITCHELL: I'm going to object
16 pursuant to the protective order. I'm also going
17 to object to the form.

18 But object pursuant to the protective
19 order to the extent that'll require the disclosure
20 of identifying information. If you can -- if you
21 can answer without doing so, you can answer.

22 THE WITNESS: No.

23 BY MS. NELSON-MAJOR:

24 Q. Has the pharmacy at which you work been
25 investigated for failing to comply with any local,

1 state, or federal regulations or law?

2 MR. MITCHELL: Object to the form.

3 THE WITNESS: No.

4 BY MS. NELSON-MAJOR:

5 Q. Has your pharmacy ever been directed to
6 recall lots of compounded drugs?

7 A. Yes.

8 Q. Without naming the name of a state, were
9 you directed to do so by a state Board of Pharmacy?

10 A. No.

11 Q. Were you directed by the manufacturer of
12 the API to do so?

13 A. No.

14 Q. Were you directed by the FDA to do so?

15 A. No.

16 Q. Why were you directed -- how many times
17 have you been directed to recall lots of compounded
18 drugs?

19 A. Once.

20 Q. What was the issue with that lot of
21 drugs?

22 A. It was determined to be mislabeled.

23 Q. Were you the pharmacist that had
24 compounded that lot of drugs?

25 A. No.

1 MR. MITCHELL: Object to the form.

2 BY MS. NELSON-MAJOR:

3 Q. What kind of drug was it?

4 A. I don't know.

5 Q. How did it come to light that the drug
6 had been mislabeled?

7 A. I don't know.

8 Q. Are you aware of whether there were any
9 adverse medical events related to the recall of that
10 drug?

11 A. I am not aware, no.

12 Q. Was the issue with this recall related to
13 the reason why the pharmacy owner left your pharmacy?

14 A. No.

15 Q. Has the state Board of Pharmacy ever
16 opened an enforcement or disciplinary action against
17 you?

18 A. Against me or the pharmacy?

19 Q. Against you.

20 A. Yes.

21 Q. When was that action opened?

22 MR. MITCHELL: I'm going to object,
23 pursuant to the protective order, to when that
24 action was opened.

25 BY MS. NELSON-MAJOR:

1 Q. What was the outcome of that action?

2 A. I had to pay a fine.

3 Q. And what was the nature of the violation?

4 A. Technician license had expired.

5 Q. Is this the same technician who is
6 involved in assisting you in the preparation of
7 compounded drugs for TDOC?

8 A. It is not.

9 Q. Did this occur at the current pharmacy in
10 which you're employed or was that at a previous
11 employer?

12 A. Previous employer.

13 Q. Has the state Board of Pharmacy ever
14 opened an enforcement or disciplinary action against
15 the pharmacy that you are currently employed at?

16 A. No.

17 Q. Were you aware that the technician's
18 license had been expired?

19 A. No.

20 Q. Did you ever tell the TDOC about the
21 FDA's negative finding against the third-party testing
22 facility that you have used to test TDOC's lethal
23 injection chemicals?

24 MR. MITCHELL: Object to form.

25 THE WITNESS: No.

1 BY MS. NELSON-MAJOR:

2 Q. Could you state that answer again,
3 Pharmacist?

4 A. No.

5 MS. NELSON-MAJOR: I don't have much
6 left, but I think now might be a good time to take
7 a couple-minute break, and then we could hopefully
8 wrap up soon.

9 MR. MITCHELL: Do you want to -- we can
10 go off the record.

11 THE VIDEOGRAPHER: We're off the record
12 at 3:13 p.m.

13 (Recess at 3:13 p.m. to 3:25 p.m.)

14 THE VIDEOGRAPHER: We're back on record.
15 The time is 3:25 p.m.

16 BY MS. NELSON-MAJOR:

17 Q. Pharmacist, I'd like to ask you a couple
18 of questions about the violation letter issued to the
19 third-party testing company that your pharmacy
20 contracts with.

21 Do you know when the events that
22 triggered the violation letter occurred?

23 MR. MITCHELL: I'm going to object.
24 Well, you can answer. To the extent it's a
25 yes-or-no question, you can answer. But

1 otherwise, I'm going to instruct you not to answer
2 pursuant to the protective order, DE107, Page ID
3 5116.

4 Pharmacist, you're on mute.

5 THE WITNESS: I can't answer "Yes" or
6 "No."

7 BY MS. NELSON-MAJOR:

8 Q. You're unaware of when the events that
9 triggered the violation letter occurred?

10 A. I'm aware of the year.

11 Q. And what year was that?

12 MR. MITCHELL: No, I'm going to object
13 again. Pursuant to the protective order, do not
14 answer.

15 BY MS. NELSON-MAJOR:

16 Q. Did the violation relate to testing that
17 the third-party company performed for your pharmacy?

18 A. No.

19 Q. Did you take any notes during the
20 deposition today?

21 A. No.

22 Q. And do you have any documents in the room
23 with you other than the exhibits that we discussed?

24 A. No.

25 MS. NELSON-MAJOR: I don't have any

1 further questions, but I would request that we
2 leave the deposition open in order to resolve the
3 objections that were raised today.

4 MR. MITCHELL: We don't object to leaving
5 the deposition open for that reason, but we would
6 ask that we're permitted to talk -- talk to the
7 Pharmacist and still employ the Pharmacist without
8 waiving attorney-client or anything like that.

9 MS. NELSON-MAJOR: That's fine.

10 MR. MITCHELL: One other thing I want to
11 bring up on the record. We would like to request
12 that all mentions of [State] be stricken and just
13 reinsert the word "state" in brackets or something
14 like that. I don't know if that's something you
15 would agree to, Ms. Nelson-Major, or not.

16 MS. NELSON-MAJOR: I agree with that.

17 MR. MITCHELL: Did you get that,
18 Ms. Sansom?

19 THE COURT REPORTER: I did.

20 MR. MITCHELL: Okay. Thank you.

21 THE VIDEOGRAPHER: We're off the record.

22 The time is 3:28 p.m.

23 (Proceedings adjourned sine die at 3:28
24 p.m.)
25

C E R T I F I C A T E

STATE OF TENNESSEE

COUNTY OF KNOX

I, Rhonda S. Sansom, RPR, CRR, CRC, LCR #685, licensed court reporter in and for the State of Tennessee, do hereby certify that Volume 1 of the above videoconference deposition of PHARMACIST was reported by me and that the foregoing 224 pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this action.

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